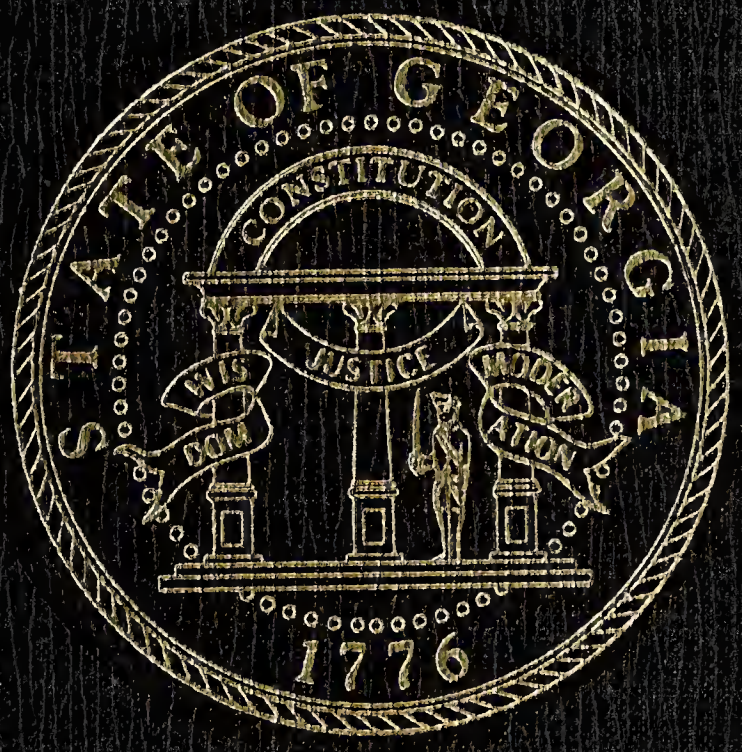
OFFICIAL CODE OF GEORGIA

ANNOTATED



VOLUME 28

Title 37. Mental Health

Title 38. Military, Emergency Management, and Veterans Affairs

Title 39. Minors

2012 Edition

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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 28

2012 Edition

Title 37. Mental Health

Title 38. Military, Emergency Management, and Veterans Affairs

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Including Acts of the 2012 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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ISBN 978-0-7698-4591-3
4192212

(Pub.41805)

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brian P. Kemp, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as same appear of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 26th day of June, in the year of our Lord Two Thousand and Twelve and of the Independence of the United States of America the Two Hundred and Thirty-Sixth.

B. P. K

Brian P. Kemp, Secretary of State

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Preface

This volume cumulates and replaces the 1995 edition of Volume 28 of the Official Code of Georgia Annotated, as supplemented by the 2011 Cumulative Supplement. The 1995 Volume 28 and its 2011 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Titles 37, 38, and 39 by the General Assembly through the 2012 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice Forms; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2010, 2011, and 2012 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2010 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Law reviews. — For note, "Deinstitutionalization: Georgia's Progress in Developing and Implementing an 'Effectively Working Plan' as Required by Olmstead v. L.C. ex rel," see 25 Ga. St. U.L. Rev. 699 (2009).

CHAPTER 1

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37-1-100. Penalty for violations of the provisions of this title.

Cross references. — Mental competency proceedings for juveniles, T. 15, C. 11, A. 4.

Administrative rules and regulations. — Rules and regulations on "Mental Health and Mental Retardation and Substance Abuse," Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Chapters 290-4-1 and 290-4-3 et seq.

RESEARCH REFERENCES

ALR. — Adequacy of defense counsel's representation of criminal client regarding incompetency, insanity, and related issues, 17 ALR4th 575.

ARTICLE 1

GENERAL PROVISIONS

37-1-1. Definitions.

As used in this title, the term:

(1) "Addictive disease" means a chronic, often relapsing, brain disease that causes compulsive alcohol or drug seeking and use despite harmful consequences to the individual who is addicted and to those around him or her.

(2) "Board" means the Board of Behavioral Health and Developmental Disabilities.

(3) "Commissioner" means the commissioner of behavioral health and developmental disabilities.

(4) "Community service board" means a public mental health, developmental disabilities, and addictive diseases board established pursuant to Code Section 37-2-6.

(5) "Consumer" means a natural person who has been or is a recipient of disability services.

(6) "County board of health" means a county board of health established in accordance with Chapter 3 of Title 31 and includes its duly authorized agents.

(7) "Department" means the Department of Behavioral Health and Developmental Disabilities and includes its duly authorized agents and designees.

(8) "Developmental disability" means a severe, chronic disability of an individual that:

(A) Is attributable to a significant intellectual disability, or any combination of a significant intellectual disability and physical impairments;

(B) Is manifested before the individual attains age 22;

(C) Is likely to continue indefinitely;

(D) Results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living; and

(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance which are of lifelong or extended duration and are individually planned and coordinated.

(9) "Disability" means:

(A) Mental or emotional illness;

(B) Developmental disability; or

(C) Addictive disease.

(10) "Disability services" means services to the disabled or services which are designed to prevent or ameliorate the effect of a disability.

(11) "Disabled" means any person or persons having a disability.

(12) "Mental illness" means a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(13) "Mentally ill" means having a mental illness.

(14) "Peace officer" means any federal, city, or county police officer, any officer of the Georgia State Patrol, or any sheriff or deputy sheriff.

(15) "Penal offense" means a violation of a law of the United States, this state, or a political subdivision thereof for which the

offender may be confined in a state prison or a city or county jail or any other penal institution.

(16) "Physician" means any person duly authorized to practice medicine in this state under Chapter 34 of Title 43.

(17) "Psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist as set forth in paragraph (3) of Code Section 43-39-1.

(18) "Regional board" means a regional board established in accordance with Code Section 37-2-4.1 as that Code section existed on June 30, 2002.

(19) "Regional coordinator" means an employee of the department who acts as the department's agent and designee to manage community services for consumers of disability services within a mental health, developmental disabilities, and addictive diseases region established in accordance with Code Section 37-2-3.

(20) "Regional office" means an office created pursuant to Code Section 37-2-4.1. Such office shall be an office of the department and serve as the entity for the administration of disability services in a region.

(21) "Regional planning board" means a planning board established in accordance with Code Section 37-2-4.1.

(22) "Regional services administrator" means an employee of the department who, under the supervision of the regional coordinator, manages the purchase or authorization of services, or both, for consumers of disability services, the assessment and coordination of services, and ongoing monitoring and evaluation of services provided within a region established in accordance with Code Section 37-2-3.

(23) "Regional state hospital administrator" means the chief administrative officer of a state owned or state operated hospital and the state owned or operated community programs in a region. The regional state hospital administrator has overall management responsibility for the regional state hospital and manages services provided by employees of the regional state hospital and employees of state owned or operated community programs within a mental health, developmental disabilities, and addictive diseases region established in accordance with Code Section 37-2-3.

(24) "Resident" means a person who is a legal resident of the State of Georgia.

(25) "State mental health facility" means, for purposes of this title and Title 31, a hospital, inpatient unit, or other institution operated by or under contract with the department for its operation, including

the replacement or reorganization of the facility. (Ga. L. 1958, p. 697, § 1; Ga. L. 1960, p. 837, § 1; Code 1933, § 88-501, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1991, p. 1059, § 6; Ga. L. 1993, p. 1445, § 5; Ga. L. 1994, p. 97, § 37; Ga. L. 2002, p. 1324, §§ 1-6, 2-1; Ga. L. 2006, p. 310, § 2/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a semicolon was deleted from the end of paragraph (2), a second subdivision (8)(D)(ii) was redesignated as subdivision (8)(D)(iii), and the definitions in paragraphs (12) and (13) were arranged in alphabetical order.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that those provisions of that Act which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective April 21, 2006.

Law reviews. — For article, "Courts: General Provisions," 28 Ga. St. U.L. Rev. 293 (2011).

For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 121 (1992).

JUDICIAL DECISIONS

Mental illness. — Patient's personality disorders and schizo-affective disorder qualified as mental illness under O.C.G.A. § 37-1-1(12). Dupree v. Schwarzkophf, No. S11A0290, 2011 Ga. LEXIS 508 (June 27, 2011).

Cited in Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980); Benham v. Edwards, 501 F. Supp. 1050 (N.D. Ga. 1980).

OPINIONS OF THE ATTORNEY GENERAL

"Doctors of medicine", similar terms construed. — Terms "doctors of medicine," "licensed doctors of medicine," "doctors of medicine licensed to practice in the state," and similar terms used in § 43-34-21 include persons who have

graduated from a medical college and hold the degree of Doctor of Medicine and those who hold the degree of Doctor of Osteopathy; where those terms are used to describe the qualifications of physicians to be hired by the Department of Human Resources, the department may hire physicians who have either degree. 1974 Op. Att'y Gen. No. 74-50.

Department may employ degree holders in osteopathy and medicine. — Since the phrase "doctor of medicine who is licensed to practice in the state" refers to those persons who hold degrees as Doctors of Osteopathy as well as Doctors of Medicine, the department may employ persons holding either degree; however, while all practicing osteopaths are licensed by statute, thus qualifying all of them to practice in state hospitals or community service programs, not all hold "full practice" licenses. 1974 Op. Att'y Gen. No. 74-50.

RESEARCH REFERENCES

ALR. — Adequacy of defense counsel's representation of criminal client — issues of incompetency, 70 ALR5th 1.

Adequacy of defense counsel's representation of criminal client — pretrial conduct or conduct at unspecified time regarding issues of insanity, 72 ALR5th 109.

37-1-2. Legislative findings as to mental health, developmental disability, and addictive disease problems and services; role of county governing authorities; purpose of this chapter and Chapter 2 of this title.

(a) The General Assembly finds that the state has a need to continually improve its system for providing effective, efficient, and quality mental health, developmental disability, and addictive disease services. Further, the General Assembly finds that a comprehensive range of quality services and opportunities is vitally important to the existence and well-being of individuals with mental health, developmental disability, or addictive disease needs and their families. The General Assembly further finds that the state has an obligation and a responsibility to develop and implement planning and service delivery systems which focus on a core set of consumer oriented, community based values and principles which include, but are not limited to, the following:

(1) Consumers and families should have choices about services and providers and should have substantive input into the planning and delivery of all services;

(2) A single point of accountability should exist for fiscal, service, and administrative issues to ensure better coordination of services among all programs and providers and to promote cost-effective, efficient service delivery and administration;

(3) The system should be appropriately comprehensive and adaptive to allow consumers and their families to access the services they desire and need;

(4) Public programs are the foundation of the service planning and delivery system and they should be valued and nurtured; at the same time, while assuring comparable standards of quality, private sector involvement should be increased to allow for expanded consumer choice and improved cost effectiveness;

(5) Planning should begin at the local level and include local government, consumers, families, advocates, and other interested local parties;

(6) The system should ensure that the needs of consumers who are most in need are met at the appropriate service levels; at the same time, prevention strategies should be emphasized for those disabilities which are known to be preventable;

(7) The system should be designed to provide the highest quality of services utilizing flexibility in funding, incentives, and outcome evaluation techniques which reinforce quality, accountability, efficiency, and consumer satisfaction;

(8) The functions of service planning, coordination, contracting, resource allocation, and consumer assessment should be separated from the actual treatment, habilitation, and prevention services provided by contractors;

(9) Consumers and families should have a single, community based point of entry into the system;

(10) Consumers, staff, providers, and regional planning board and community service board members should receive ongoing training and education and should have access to key management resources such as information systems and technical and professional support services; and

(11) The department is responsible for ensuring the appropriate use of state, federal, and other funds to provide quality services for individuals with mental health, developmental disabilities, or addictive disease needs who are served by the public system and to protect consumers of these services from abuse and maltreatment.

(b) Local governments, specifically county governing authorities, have provided outstanding leadership and support for mental health, developmental disability, and addictive disease programs, and the General Assembly finds that their investments, both personal and capital, should be valued and utilized in any improved system. As such, the state and any new governing structure should take special precautions to ensure that the county governing authorities have an expanded level of input into decision making and resource allocation and that any services or programs should continue to use and expand their use of county facilities and resources wherever appropriate and possible.

(c) The purpose of this chapter and Chapter 2 of this title is to provide for a comprehensive and improved mental health, developmental disability, and addictive disease services planning and delivery system in this state which will develop and promote the essential public interests of the state and its citizens. The provisions of this chapter and Chapter 2 of this title shall be liberally construed to achieve their purposes. (Code 1981, § 37-1-2, enacted by Ga. L. 1993, p. 1445, § 6; Ga. L. 1995, p. 10, § 37; Ga. L. 2002, p. 1324, § 1-6; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which enacts this Code section, provides, in § 19.1, not codified by the General Assembly, that this Code section is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed this Code section.

37-1-3. Board of Behavioral Health and Developmental Disabilities; members; removal.

(a) There is created the Board of Behavioral Health and Developmental Disabilities which shall establish the general policy to be followed by the Department of Behavioral Health and Developmental Disabilities. The powers, functions, and duties of the Board of Human Resources as they existed on June 30, 2009, with regard to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases are transferred to the Board of Behavioral Health and Developmental Disabilities effective July 1, 2009. The board shall consist of nine members appointed by the Governor and confirmed by the Senate.

(b) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; and three members shall be appointed for three years. Thereafter, all succeeding appointments shall be for three-year terms from the expiration of the previous term.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant. An appointment to fill a vacancy other than by

expiration of a term of office shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board elected by and from the membership of the board who shall be the presiding officer of the board.

(f) The members of the board shall receive a per diem allowance and expenses as shall be set and approved by the Office of Planning and Budget in conformance with rates and allowances set for members of other state boards. (Code 1981, § 37-1-3, enacted by Ga. L. 2009, p. 453, § 3-1/HB 228.)

37-1-4. Department of Behavioral Health and Developmental Disabilities; functions, duties; commissioner.

(a) There is created a Department of Behavioral Health and Developmental Disabilities. The powers, functions, and duties of the Department of Human Resources as they existed on June 30, 2009, relating to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases are transferred to the Department of Behavioral Health and Developmental Disabilities effective July 1, 2009.

(b) There is created the position of commissioner of behavioral health and developmental disabilities. The commissioner shall be the chief administrative officer of the department and be both appointed and removed by the board, subject to the approval of the Governor. Subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department.

(c) There shall be created in the department such divisions as may be found necessary for its effective operation. The commissioner shall have the power to allocate and reallocate functions among the divisions within the department. (Code 1981, § 37-1-4, enacted by Ga. L. 2009, p. 453, § 3-1/HB 228.)

37-1-5. Department to succeed to applicable rules and regulations; transfer of rights, responsibilities, duties, personnel, and property.

(a) The Department of Behavioral Health and Developmental Disabilities shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July

1, 2009, and which relate to the functions transferred to the Department of Behavioral Health and Developmental Disabilities pursuant to Code Section 37-1-4 and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Behavioral Health and Developmental Disabilities pursuant to Code Section 37-1-4. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Behavioral Health and Developmental Disabilities by proper authority or as otherwise provided by law.

(b) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Behavioral Health and Developmental Disabilities pursuant to Code Section 37-1-4 shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Behavioral Health and Developmental Disabilities. In all such instances, the Department of Behavioral Health and Developmental Disabilities shall be substituted for the Department of Human Resources, and the Department of Behavioral Health and Developmental Disabilities shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(c) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Behavioral Health and Developmental Disabilities pursuant to Code Section 37-1-4 on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Behavioral Health and Developmental Disabilities in similar capacities, as determined by the commissioner of behavioral health and developmental disabilities. Such employees shall be subject to the employment practices and policies of the Department of Behavioral Health and Developmental Disabilities on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and who are transferred to the department shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees

as employees of the Department of Behavioral Health and Developmental Disabilities.

(d) On July 1, 2009, the Department of Behavioral Health and Developmental Disabilities shall receive custody of the state owned real property in the custody of the Department of Human Resources on June 30, 2009, and which pertains to the functions transferred to the Department of Behavioral Health and Developmental Disabilities pursuant to Code Section 37-1-4. (Code 1981, § 37-1-5, enacted by Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2012, p. 446, § 2-56/HB 642.)

The 2012 amendment, effective July 1, 2012, in subsection (c), in the third sentence, deleted "and thereby under the State Personnel Administration" following "State Personnel Board" and substituted "under such rules" for "under the State Personnel Administration" at the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "State Personnel Administration" was substituted for "State Merit System of Personnel Administration" twice in the third sentence of subsection (c).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

37-1-6. Service of notice of pendency of action by second original process.

When any action is brought against the department, the board, the commissioner, or any employee or agent thereof or when any action is brought in which the department could be held responsible for damages awarded in such action, it shall be the duty of the plaintiff to provide for service of notice of the pendency of such action by providing for service of a second original process, issued from the court in which the action is filed, upon the commissioner personally or upon a person designated by the commissioner in writing to serve as agent for the acceptance of such service of process. The service of process in such action shall not be perfected until such second original process has been served as provided in this Code section. The provisions of this Code section shall be cumulative of any other requirements imposed by law for the service of process or notice. (Code 1981, § 37-1-6, enacted by Ga. L. 2010, p. 286, § 1/SB 244.)

Effective date. — This Code section became effective July 1, 2010.

ARTICLE 2

POWERS AND DUTIES OF THE DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES

Cross references. — Juvenile Court disposition of mentally ill or mentally retarded child, Uniform Rules for the Juvenile Courts of Georgia, Rule 20.3.

37-1-20. Obligations of the Department of Behavioral Health and Developmental Disabilities.

The department shall:

(1) Establish, administer, and supervise the state programs for mental health, developmental disabilities, and addictive diseases;

(2) Direct, supervise, and control the medical and physical care and treatment; recovery; and social, employment, housing, and community supports and services based on single or co-occurring diagnoses provided by the institutions, contractors, and programs under its control, management, or supervision;

(3) Plan for and implement the coordination of mental health, developmental disability, and addictive disease services with physical health services, and the prevention of any of these diseases or conditions, and develop and promulgate rules and regulations to require that all health services be coordinated and that the public and private providers of any of these services that receive state support notify other providers of services to the same patients of the conditions, treatment, and medication regimens each provider is prescribing and delivering;

(4) Ensure that providers of mental health, developmental disability, or addictive disease services coordinate with providers of primary and specialty health care so that treatment of conditions of the brain and the body can be integrated to promote recovery, health, and well-being;

(5) Have authority to contract for services with community service boards, private agencies, and other public entities for the provision of services within a service area so as to provide an adequate array of services and choice of providers for consumers and to comply with the applicable federal laws and rules and regulations related to public or private hospitals; hospital authorities; medical schools and training and educational institutions; departments and agencies of this state; county or municipal governments; any person, partnership, corporation, or association, whether public or private; and the United States government or the government of any other state;

(6) Establish and support programs for the training of professional and technical personnel as well as regional planning boards and community service boards;

(7) Have authority to conduct research into the causes and treatment of disability and into the means of effectively promoting mental health and addictive disease recovery;

(8) Assign specific responsibility to one or more units of the department for the development of a disability prevention program. The objectives of such program shall include, but are not limited to, monitoring of completed and ongoing research related to the prevention of disability, implementation of programs known to be preventive, and testing, where practical, of those measures having a substantive potential for the prevention of disability;

(9) Establish a system for regional administration of mental health, developmental disability, and addictive disease services in institutions and in the community;

(10) Make and administer budget allocations to regional offices established by the board pursuant to Code Section 37-2-4.1 to fund the operation of mental health, developmental disabilities, and addictive diseases facilities and programs;

(11) Coordinate in consultation with providers, professionals, and other experts the development of appropriate outcome measures for client centered service delivery systems;

(12) Establish, operate, supervise, and staff programs and facilities for the treatment of disabilities throughout this state;

(13) Disseminate information about available services and the facilities through which such services may be obtained;

(14) Supervise the regional office's exercise of its responsibility and authority concerning funding and delivery of disability services;

(15) Supervise the regional offices concerning the receipt and administration of grants, gifts, moneys, and donations for purposes pertaining to mental health, developmental disabilities, and addictive diseases;

(16) Supervise the administration of contracts with any hospital, community service board, or any public or private providers without regard to regional or state boundaries for the provision of disability services and in making and entering into all contracts necessary or incidental to the performance of the duties and functions of the department and the regional offices;

(17) Regulate the delivery of care, including behavioral interventions and medication administration by licensed staff, or certified

staff as determined by the department, within residential settings serving only persons who are receiving services authorized or financed, in whole or in part, by the department;

(18) Classify host homes for persons whose services are financially supported, in whole or in part, by funds authorized through the department. As used in this Code section, the term "host home" means a private residence in a residential area in which the occupant owner or lessee provides housing and provides or arranges for the provision of food, one or more personal services, supports, care, or treatment exclusively for one or two persons who are not related to the occupant owner or lessee by blood or marriage. A host home shall be occupied by the owner or lessee, who shall not be an employee of the same community provider which provides the host home services by contract with the department. The department shall approve and enter into agreements with community providers which, in turn, contract with host homes. The occupant owner or lessee shall not be the guardian of any person served or of their property nor the agent in such person's advance directive for health care. The placement determination for each person placed in a host home shall be made according to such person's choice as well as the individual needs of such person in accordance with the requirements of Code Section 37-3-162, 37-4-122, or 37-7-162, as applicable to such person;

(19) Provide guidelines for and oversight of host homes, which may include, but not be limited to, criteria to become a host home, requirements relating to physical plants and supports, placement procedures, and ongoing oversight requirements;

(20) Establish a unit of the department which shall receive and consider complaints from individuals receiving services, make recommendations to the commissioner regarding such complaints, and ensure that the rights of individuals receiving services are fully protected;

(21) With respect to housing opportunities for persons with mental illness and co-occurring disorders:

(A) Coordinate the department's programs and services with other state agencies and housing providers;

(B) Facilitate partnerships with local communities;

(C) Educate the public on the need for supportive housing;

(D) Collect information on the need for supportive housing and monitor the benefit of such housing; and

(E) Identify and determine best practices for the provision of services connected to housing;

(22) Exercise all powers and duties provided for in this title or which may be deemed necessary to effectuate the purposes of this title;

(23) Assign specific responsibility to one or more units of the department for the development of programs designed to serve disabled infants, children, and youth. To the extent practicable, such units shall cooperate with the Georgia Department of Education and the University System of Georgia in developing such programs; and

(24) Have the right to designate private institutions as state institutions; to contract with such private institutions for such activities, in carrying out this title, as the department may deem necessary from time to time; and to exercise such supervision and cooperation in the operation of such designated private institutions as the department may deem necessary. (Code 1933, §§ 88-601, 88-602, 88-603, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-603, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1987, p. 3, § 37; Ga. L. 1993, p. 1445, § 7; Ga. L. 2002, p. 1324, § 1-6; Ga. L. 2003, p. 558, §§ 5, 6; Ga. L. 2008, p. 263, § 2/SB 469; Ga. L. 2009, p. 8, § 37/SB 46; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2009, p. 8, § 37, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 453, § 3-1. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

RESEARCH REFERENCES

ALR. — Adequacy of defense counsel's representation of criminal client — issues of incompetency, 70 ALR5th 1.

Adequacy of defense counsel's representation of criminal client — pretrial conduct or conduct at unspecified time regarding issues of insanity, 72 ALR5th 109.

37-1-21. Institutional powers and duties.

(a) The department is designated and empowered as the agency of this state responsible for supervision and administrative control of: state facilities for the treatment of mental illness or the habilitation and treatment of individuals with developmental disabilities; programs for the care, custody, and treatment of addictive disease; and other facilities, institutions, or programs which now or hereafter come under the supervision and administrative control of the department. With respect to all such facilities, institutions, or programs the department shall have the following powers and duties:

(1) To create all necessary offices, appoint and remove all officers of such facilities, institutions, or programs, prescribe and change the duties of such officers from time to time, and fix their salaries, other than the commissioner's salary, as provided for by the pay plan covering positions in accordance with rules and regulations of the State Personnel Board. The department shall discharge and cause to be prosecuted any officer or other person who shall assault any patient in any of such facilities or institutions or who shall knowingly use toward any such patient any other or greater force than the occasion may require;

(2) To refuse or accept and hold in trust for any such facility, institution, or program any grant or devise of land or bequest or donation of money or other property for the particular use specified or, if no use is specified, for the general use of such facility, institution, or program;

(3) To bring suit in its name for any claims which any such facility or institution may have, however arising;

(4) To appoint police of such facilities, institutions, or programs who are authorized, while on the grounds or in the buildings of the respective facilities, institutions, or programs to make arrests with the same authority, power, privilege, and duties as the sheriffs of the respective counties in which such facilities, institutions, or programs are situated; and

(5) To have full authority to receive and treat patients ordered admitted to such facilities, institutions, or programs pursuant to any law, to receive any voluntary patients, to discharge such patients pursuant to law, to contract with patients or other persons acting on behalf of patients or legally responsible therefor, and in general to exercise any power or function with respect to patients provided by law. It is the intent of the General Assembly to provide always the highest quality of diagnosis, treatment, custody, and care consistent with medical, therapeutic, and habilitative evidence based practice

and knowledge. It is the further intent of the General Assembly that the powers and duties of the department with respect to patients shall be administered by persons properly trained professionally for the exercise of their duties, consistent with the intention expressed in this Code section.

(b) The board is empowered to prescribe all rules and regulations for the management of such facilities, institutions, and programs not conflicting with the law. (Code 1933, § 88-115, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2002, p. 1324, § 1-6; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 286, § 2/SB 244; Ga. L. 2012, p. 446, § 2-57/HB 642.)

The 2010 amendment, effective July 1, 2010, deleted ". If because of the contagious or infectious nature of the disease of persons arrested facilities are not available for their detention, such police shall be authorized to confine such persons within the respective facilities, institutions, or programs pending trial as provided in other cases. After trial and conviction of any such person, he or she shall be sentenced to serve his or her term of sentence in the secured ward of the facility, institution, or program" following "situated" at the end of paragraph (a)(4).

The 2012 amendment, effective July 1, 2012, in the first sentence of paragraph (a)(1), inserted ", other than the commissioner's salary,", deleted "under the State Personnel Administration and" following "covering positions", and deleted ", except that the commissioner shall not be subject to the State Personnel Administration or the rules and regulations of the State Personnel Board" following "State Personnel Board" at the end.

Cross references. — Tuberculosis hospitals, T. 31, C. 14 .

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Hicks v. Shea, 149 Ga. App. 396, 254 S.E.2d 511 (1979); Fields v. Pittman, 571 F. Supp. 32 (N.D. Ga. 1983).

OPINIONS OF THE ATTORNEY GENERAL

It is the express intent of the General Assembly to always provide the highest degree of medical, scientific, and other diagnosis, treatment, custody, and care as is consistent with medical practice. 1965-66 Op. Att'y Gen. No. 65-74.

Authority to classify and operate certain institutions. — Department of Human Resources has authority to classify units of Gracewood State School and Hospital and Central State Hospital as skilled nursing home and general hospital and has ample authority to operate these institutions. 1969 Op. Att'y Gen. No. 69-243.

Regulation of abortion procedures by board within constitutional limi-

tations. — Under its purposely broad statutory authority to safeguard the public health as well as under its statutory authority in specific areas of the public health field, the Board of Human Resources may regulate, for public health purposes, the performance of abortion procedures, limited, however, by the constitutional doctrines enunciated by the Supreme Court of the United States. 1973 Op. Att'y Gen. No. 73-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 20.

C.J.S. — 39A C.J.S., Health and Environment, §§ 4, 6.

37-1-22. Redesignated.

Reserved.

Editor's notes. — Ga. L. 2011, p. 752, § 37(2), effective May 13, 2011, redesignated former Code Section 37-1-22 as present Code Section 37-1-40, and reserved the designation of this Code section.

37-1-23. Rules of practice and procedure; availability.

The board is directed to prescribe rules of practice and procedure in order to implement this chapter. The department is directed to make the board's and the department's rules available for distribution. (Code 1933, § 88-308, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1993, p. 1445, § 9; Ga. L. 2002, p. 1324, § 1-6; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Cross references. — County boards of health generally, T. 31, C. 3.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 45.

C.J.S. — 39A C.J.S., Health and Environment, §§ 20, 23, 24, 25.

37-1-24. Use of psychologist or physician in lieu of one another.

No provision in this title shall require the department or any facility or private facility or any community service board to utilize a physician in lieu of a psychologist or a psychologist in lieu of a physician in performing functions under this title even though this title authorizes either a physician or a psychologist to perform the function. (Code 1981, § 37-1-24, enacted by Ga. L. 1991, p. 1059, § 7; Ga. L. 1993, p. 1445, § 10; Ga. L. 2002, p. 1324, § 1-6; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Law reviews. — For note on 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 121 (1992).

37-1-25. Purchase of real property authorized.

The department is authorized to purchase land or lands adjacent to or near lands now under the control of the department where, in the opinion of the department, the land is needed for the benefit of one of the institutions under its control and management, to pay for such land out of any funds which may be available for such purpose, and to take title to land so purchased in the name of the State of Georgia for the use of the department. (Code 1981, § 37-1-25, enacted by Ga. L. 2009, p. 453, § 3-1/HB 228.)

37-1-26. Sale of surplus products.

(a) The department shall sell, to the best advantage, all surplus products of the Central State Hospital or other institutions under the control and supervision of the department and shall apply the proceeds thereof to the maintenance of the institution from which such surplus products are received. Should any surplus funds arise from this source, they shall be paid into the state treasury annually; and the department shall, at the end of each quarter, make a detailed report of all such transactions to the Governor.

(b) It is not the intention of this Code section to encourage competition in any way by the state, its institutions, agencies, departments or branches, or other subdivisions with the individual, private farmers of this state, or others, in the production and sale of agricultural or industrial commodities or products in due course of commerce. (Code 1981, § 37-1-26, enacted by Ga. L. 2009, p. 453, § 3-1/HB 228.)

37-1-27. Legislative findings; Suicide Prevention Program; implementation.

(a) The General Assembly makes the following findings:

(1) Every year in Georgia, approximately 850 people die from suicide;

(2) More Georgians die from suicide than from homicide;

(3) More teenagers and young adults die from suicide than from cancer, heart disease, AIDS, birth defects, stroke, pneumonia, influenza, and chronic lung disease combined;

(4) Many who attempt suicide do not seek professional help after the attempt;

(5) In Georgia, three out of four suicide deaths involve a firearm;

(6) Factors such as aging, drug and alcohol abuse, unemployment, mental illness, isolation, and bullying in school contribute to causes of suicide; and

(7) Education is necessary to inform the public about the causes of suicide and the early intervention programs that are available.

(b) There is created the Suicide Prevention Program to be managed by the department.

(c) The department, in implementing the Suicide Prevention Program, shall:

(1) Establish a link between state agencies and offices, including but not limited to the Division of Aging Services and Division of Family and Children Services of the Department of Human Services, the Department of Public Health, local government agencies, health care providers, hospitals, nursing homes, and jails to collect data on suicide deaths and attempted suicides;

(2) Work with public officials to improve firearm safety;

(3) Improve education for nurses, judges, physician assistants, social workers, psychologists, and other counselors with regard to suicide education and prevention and expand educational resources for professionals working with those persons most at risk of suicide;

(4) Provide training and minimal screening tools for clergy, teachers and other educational staff, and correctional workers on how to identify and respond to persons at risk of suicide;

(5) Provide educational programs for family members of persons at an elevated risk of suicide;

(6) Develop standardized protocols to be used by the department in reviewing suicide death scene investigations;

(7) Work to increase the number of follow-back studies of suicides;

(8) Work to increase the number of hospitals that code for external causes of injury;

(9) Implement a state-wide reporting system for reporting suicides;

(10) Support pilot projects to link and analyze information on self-destructive behavior from various, distinct data systems; and

(11) Perform such other tasks as deemed appropriate to further suicide education and prevention in Georgia.

(d) The Suicide Prevention Program shall coordinate with and receive technical assistance from epidemiologists and other staff of the Department of Public Health to support the research and outreach efforts related to this program. (Code 1981, § 37-1-27, enacted by Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 5-20/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in paragraph (c)(1); and substituted "Department of Public Health" for "Division of Public Health of the Department of Community Health" in subsection (d).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

37-1-28. Conviction data.

(a) As used in this Code section, the term "conviction data" means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department or its contractors is considering as a final selectee for employment in a position the duties of which involve direct care, treatment, custodial responsibilities, or any combination thereof for its clients. The department may also receive conviction data which is relevant to a person whom the department or its contractors is considering as a final selectee for employment in a position if, in the judgment of the

employer, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public, or other employees.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (a) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions or decisions concerning individuals in the care of the department and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data, all such conviction data collected by the department or its agent shall be maintained by the department or agent pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable.

(e) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(f) The department shall be authorized to conduct a name or descriptor based check of any person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who provides care or is in contact with persons under the care of the department without the consent of such person and without fingerprint comparison to the fullest extent permissible by federal and state law. (Code 1981, § 37-1-28, enacted by Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 3/SB 244.)

The 2010 amendment, effective July 1, 2010, substituted "department or its contractors" for "department, its contractors, or a district or county health agency"

twice in subsection (b); deleted former subsection (f), which read: "The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any and all other information which it may be provided pursuant to state or federal law which is relevant to any person in the care of the department. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such persons to the proper law enforcement agency for a name based check of such person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such circumstances, the department shall submit fingerprints of those persons together with any required records search fee, to the Federal Bureau of Investigation within 15 calendar days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person."; and redesignated former subsection (g) as present subsection (f).

37-1-29. Crisis stabilization unit defined; licensure of units; minimum standards and requirements; designation as an emergency receiving facility; legislative intent; rules and regulations.

(a) As used in this Code section, the term "crisis stabilization unit" means a short-term residential program operated for the purpose of providing psychiatric stabilization and detoxification services that complies with applicable department standards and that provides brief, intensive crisis services 24 hours a day, seven days a week.

(b) The department shall be authorized to license crisis stabilization units pursuant to this Code section for the purpose of providing psychiatric stabilization and detoxification services in a community based setting rather than inpatient hospitalization and other higher levels of care.

(c) The department shall establish minimum standards and requirements for the licensure of crisis stabilization units. Such standards and requirements shall include, but not be limited to, the following:

(1) The capacity to carry out emergency receiving and evaluating functions;

(2) Voluntary and involuntary admission criteria;

(3) The prohibition to hold itself out as a hospital or bill for hospital or inpatient services;

(4) The unit is operated by an accredited and licensed, if applicable, health care authority;

(5) The unit has operating agreements with private and public inpatient hospitals and treatment facilities;

(6) The unit operates within the guidelines of the federal Emergency Medical Treatment and Active Labor Act with respect to stabilization and transfer of clients;

(7) Length of stay;

(8) Designation of transitional beds;

(9) Billing;

(10) Physician and registered professional nurse oversight;

(11) Staff to client ratios;

(12) Patient restraint or seclusion;

(13) Safety and emergency protocols;

(14) Pharmacy services;

(15) Medication administration; and

(16) Reporting requirements.

(d) A crisis stabilization unit shall be designated as an emergency receiving facility under Code Sections 37-3-40 and 37-7-40 and an evaluation facility under Code Sections 37-3-60 and 37-7-60, but shall not be designated as a treatment facility under Code Section 37-3-80 or 37-7-80. Crisis stabilization units may admit individuals on a voluntary basis. Individuals may be provided 24 hour observation, detoxification and stabilization services, medication prescribed by a physician, and other appropriate treatment or services.

(e) No entity shall operate as a crisis stabilization unit without having a valid license issued pursuant to this Code section.

(f) Application for a license to operate a crisis stabilization unit shall be submitted to the department in the manner prescribed by the department's rules and regulations.

(g) The department shall issue a license to an applicant who meets all the rules and regulations for the licensure of crisis stabilization units. The license shall be nontransferable for a change of location or governing body.

(h) Each licensee shall permit authorized department representatives to enter upon and inspect any and all premises for which a license

has been granted or applied for so that verification of compliance with all relevant laws or regulations can be made.

(i) The department may deny any license application which does not meet all the rules and regulations for the licensure of crisis stabilization units and may suspend or revoke a license which has been issued if an applicant or a licensee violates any such rules and regulations; provided, however, that before any order is entered denying a license application or suspending or revoking a license previously granted, the applicant or license holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(j) Any program licensed as a crisis stabilization unit pursuant to this Code section shall be exempt from the requirements to obtain a certificate of need pursuant to Article 3 of Chapter 6 of Title 31.

(k) It is the intent of the General Assembly that this Code section provide a public benefit and comply with all safety net obligations in this title and that patients without private health care coverage receive priority consideration for crisis stabilization unit placement.

(l) The department shall promulgate rules and regulations in accordance with the General Assembly's intent as set out in subsection (k) of this Code section to implement the provisions of this Code section. (Code 1981, § 37-1-29, enacted by Ga. L. 2011, p. 346, § 1/HB 343.)

Effective date. — This Code section became effective July 1, 2011.

ARTICLE 3

PROMULGATION OF RULES AND REGULATIONS

Cross references. — Administration and enforcement of health laws generally, T. 31, C. 5.

37-1-40. Power of board to provide and promote standards, rules, and regulations.

The board shall adopt and promulgate written rules, regulations, and standards as may be deemed necessary to effectuate the purposes of this title and which shall be the basis of state financial participation in mental health, developmental disabilities, and addictive diseases programs. (Code 1933, § 88-601, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-603, enacted by Ga. L. 1976, p. 953, § 1; Code 1981, § 37-1-41; Ga. L. 1993, p. 1445, § 8; Ga. L. 2002, p. 1324, § 1-6; Ga. L. 2009, p. 453, § 3-1/HB 228; Code 1981, § 37-1-40, as redesignated by Ga. L. 2011, p. 752, § 37/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, redesignated former Code Section 37-1-22 as Code Section 37-1-40.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Ga. L. 2011, p. 752, § 37/HB 142, effective May 13, 2011, redesignated former Code Section 37-1-40 as Code Section 37-1-41.

OPINIONS OF THE ATTORNEY GENERAL

Department of Human Resources can enter into contract with a county board of health and, on the department's part, the consideration given for the contract may be the services of a state employee. 1975 Op. Att'y Gen. No. 75-22.

Consideration given by county for contract may be rendering services to state which county would not otherwise be obligated to perform, or, if the county is already obligated to perform such services, some other consideration such as money may be substituted. 1975 Op. Att'y Gen. No. 75-22.

Department of Human Resources may contract for mental retardation services with agencies that spend moneys received under those contracts for building improvements; provided, however, that public agencies may make permanent improvements only on property to which the agencies hold fee simple title. 1977 Op. Att'y Gen. No. 77-81.

Authority to give consideration. — Since counties and the department have authority to contract, it was self-evident that counties and the department have authority to give consideration for the contract since, pursuant to § 13-3-40, consideration was essential to a contract and a contract without consideration was unenforceable. 1975 Op. Att'y Gen. No. 75-22.

Only limitation on power of the Department of Human Resources to contract would be that the purpose of any particular contract would have to come within the parameters of the grant of contracting power contained in the statute. 1975 Op. Att'y Gen. No. 75-22.

37-1-41. Rules and regulations of Board of Behavioral Health and Developmental Disabilities.

All rules and regulations of the Board of Behavioral Health and Developmental Disabilities shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1933, § 88-307, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 37-1-40; Ga.

L. 1993, p. 1445, § 11; Ga. L. 2009, p. 453, § 3-1/HB 228; Code 1981, § 37-1-41, as redesignated by Ga. L. 2011, p. 752, § 37/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, redesignated former Code Section 37-1-40 as Code Section 37-1-41.

Cross references. — County boards of health generally, T. 31, C. 3.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1994, p. 437, § 12, effective July 1, 1994, not codified by the General Assembly, amends Ga. L. 1993, p. 1445, § 19.1 to exempt the 1993 amendment of this Code section from repeal on June 30, 1999.

JUDICIAL DECISIONS

Administrative appeal procedures not provided. — O.C.G.A. § 37-1-41, which requires that county boards of health conduct hearings before adopting rules and regulations, did not provide administrative appeal procedures to a hotel, motel, and restaurant association in a dispute over the assessment of inspection fees by a county board of health where no hearing had been held. Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983) (decided prior to 1993 amendment).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 20, 36.

C.J.S. — 39A C.J.S., Health and Environment, § 18 et seq.

ALR. — Regulation of business of tattooing, 81 ALR3d 1212.

Adequacy of defense counsel's representation of criminal client — issues of incompetency, 70 ALR5th 1.

Adequacy of defense counsel's representation of criminal client — pretrial conduct or conduct at unspecified time regarding issues of insanity, 72 ALR5th 109.

ARTICLE 4

HEARINGS, APPEALS, EVIDENCE, ETC.

37-1-50. Necessity of hearing; powers of hearing examiner, qualification.

Reserved. Repealed by Ga. L. 2010, p. 286, § 4/SB 244, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1933, § 88-304, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1977, p. 309, § 1; Ga. L. 1993, p. 1445, § 12; Ga. L. 2009, p. 453, § 3-1/HB 228.

37-1-51 and 37-1-52.

Reserved. Repealed by Ga. L. 1993, p. 1445, § 12, effective July 1, 1994.

Editor's notes. — These Code sections were based on Code 1933, §§ 88-303, 88-305, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 3, § 37.

Ga. L. 1994, p. 437, § 12, effective July 1, 1994, not codified by the General Assembly, amends Ga. L. 1993, p. 1445, § 19.1 to exempt the 1993 repeal of these Code sections from repeal on June 30, 1999.

37-1-53. Classification of privileged materials.

Notwithstanding any other provision of law to the contrary, the department is authorized by regulation to classify as confidential and privileged documents, reports, and other information and data obtained by them from persons, firms, corporations, municipalities, counties, and other public authorities and political subdivisions where such matters relate to secret processes, formulas, and methods or where such matters were obtained or furnished on a confidential basis. All matters so classified shall not be subject to public inspection or discovery and shall not be subject to production or disclosure in any court of law or elsewhere until and unless the judge of the court of competent jurisdiction, after in camera inspection, determines that the public interest requires such production and disclosure or that such production and disclosure may be necessary in the interest of justice. This subsection shall not apply to clinical records maintained pursuant to Code Sections 37-3-166, 37-3-167, 37-4-125, 37-4-126, 37-7-166, and 37-7-167. (Code 1933, § 88-306, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1993, p. 1445, § 12; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1994, p. 437, § 12, effective July 1, 1994, not codified by the General Assembly, amends Ga. L. 1993, p. 1445, § 19.1 to except the 1993 amendment of this Code section from repeal on June 30, 1999.

Administrative rules and regula-

tions. — Hearing and hearing records, confidentiality, custody, language, access, costs, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Administration, Hearings and Petitions for Rule-Making, Sec. 290-1-1-.18.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 45.

C.J.S. — 39A C.J.S., Health and Environment, §§ 20, 23, 24, 25.

ARTICLE 5

ENFORCEMENT PROCEDURES

Cross references. — Administration and enforcement of health laws generally, T. 31, C. 5.

PART 1

INSPECTION WARRANTS

Cross references. — Searches and seizures generally, T. 17, C. 5. Further provisions regarding use of inspection warrants in enforcement of public health laws, § 31-5-20 et seq.

37-1-70. Definitions.

As used in this part, the term:

(1) "Inspection warrant" means a warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of a "mental health law."

(2) "Mental health law" means Code Sections 37-3-7, 37-3-8, and 37-4-7, Chapter 6 of this title, and any rule or regulation duly promulgated thereunder. (Code 1933, § 88-301a, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 1993, p. 1445, § 13; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 5/SB 244.)

The 2010 amendment, effective July 1, 2010, substituted "37-4-7" for "37-4-4" in paragraph (2).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without

such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1994, p. 437, § 12, effective July 1, 1994, not codified by the General Assembly, amends Ga. L. 1993, p. 1445, § 19.1 to except the 1993 amendment of this Code section from repeal on June 30, 1999.

RESEARCH REFERENCES

ALR. — Adequacy of defense counsel's representation of criminal client — issues of incompetency, 70 ALR5th 1.

37-1-71. Persons who may obtain inspection warrants; authorization of searches and inspections of property.

The commissioner or the commissioner's delegate, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this chapter. Such warrant shall authorize the commissioner or the commissioner's delegate to conduct a search or inspection of property either with or without the consent of the person whose property is to be searched or inspected if such search or inspection is one that is elsewhere authorized under the rules and regulations duly promulgated under this title. (Code 1933, § 88-302a, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 1993, p. 1445, § 14; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1994, p. 437, § 12, effective July 1, 1994, not codified by the General Assembly, amends Ga. L. 1993, p. 1445, § 19.1 to except the 1993 amendment of this Code section from repeal on June 30, 1999.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 27, 37.

C.J.S. — 39A C.J.S., Health and Environment, §§ 51 et seq., 57, 71, 85, 85, 86.

37-1-72. Issuance; grounds.

(a) Inspection warrants shall be issued only by a judge of a court of record whose territorial jurisdiction encompasses the property to be inspected.

(b) The issuing judge shall issue the warrant when the judge is satisfied that the following conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property; and

(2) The issuing judge determines that the issuance of the warrant is authorized by this part. (Code 1933, §§ 88-303a, 88-304a, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 2009, p. 453, § 3-1/HB 228.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 84, 85, 86.

37-1-73. Contents.

The inspection warrant shall be validly issued only if it meets the following requirements:

(1) The warrant is attached to the affidavit required to be made in order to obtain the warrant;

(2) The warrant describes either directly or by reference to the affidavit the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property of which the warrant authorizes an inspection;

(3) The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and

(4) The warrant refers in general terms to the statutory or regulatory provisions sought to be enforced. (Code 1933, § 88-305a, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 2009, p. 453, § 3-1/HB 228.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 84, 85, 86.

37-1-74. Exclusion of evidence obtained.

No facts discovered or evidence obtained in an inspection conducted under authority of an inspection warrant issued pursuant to this part shall be competent as evidence in any criminal proceeding against any party. (Code 1933, § 88-306a, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 2009, p. 453, § 3-1/HB 228.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 85, 85, 86.

PART 2

INJUNCTIONS

37-1-90. Injunctions for the purpose of enjoining violations of the provisions of this title.

The Department of Behavioral Health and Developmental Disabilities is empowered to institute appropriate proceedings for injunction in the courts of competent jurisdiction in this state for the purpose of enjoining a violation of any provision of this title as now existing or as may be hereafter amended or of any regulation or order duly issued by the board or department. The department is also empowered to maintain action for injunction to abate any public nuisance which is injurious to the public health, safety, or comfort. Such actions may be maintained notwithstanding the fact that such violation also constitutes a crime and notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the department in the county in which a violation of any provision of this title occurs. (Code 1933, § 88-302, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1993, p. 1445, § 15; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions au-

thorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1994, p. 437, § 12, effective July 1, 1994, not codified by the General Assembly, amends Ga. L. 1993, p. 1445, § 19.1 to except the 1993 amendment of this Code section from repeal on June 30, 1999.

JUDICIAL DECISIONS

Cited in Cobb County Health Dep't v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970); Cason v. Upson County Bd. of Health, 227 Ga. 451, 181 S.E.2d 487 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 43, 50.

C.J.S. — 39A C.J.S., Health and Environment, §§ 44, 51.

ALR. — Adequacy of defense counsel's representation of criminal client — issues of incompetency, 70 ALR5th 1.

Part 3

Criminal Penalties

37-1-100. Penalty for violations of the provisions of this title.

Any person violating the provisions of this title shall be guilty of a misdemeanor. (Code 1933, § 88-301, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 3-1/HB 228.)

JUDICIAL DECISIONS

Cited in Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons, 127 Ga. App. 574, 194 S.E.2d 299 (1972).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 88.

ALR. — Adequacy of defense counsel's representation of criminal client — issues of incompetency, 70 ALR5th 1.

Adequacy of defense counsel's representation of criminal client — pretrial conduct or conduct at unspecified time regarding issues of insanity, 72 ALR5th 109.

CHAPTER 2

ADMINISTRATION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, ADDICTIVE DISEASES, AND OTHER DISABILITY SERVICES

Article 1

General Provisions

Sec.

37-2-1. Declaration of purpose.

37-2-2. Definitions.

37-2-2.1. Creation of Division of Mental Health, Developmental Disabilities, and Addictive Diseases [Repealed].

37-2-3. Designation of boundaries for mental health, development disabilities, and addictive diseases regions; community service board areas.

37-2-4. Behavioral Health Coordinating Council; membership; meetings; obligations.

37-2-4.1. Regional mental health, developmental disabilities, and addictive diseases offices.

37-2-5. Regional planning boards — Establishing policy and direction for disability services; membership; bylaws; meetings; expenses.

37-2-5.1. Regional planning boards — Regional coordinator; staff and personnel; allocation of funds.

37-2-5.2. Regional planning boards — Duties and functions; power to contract; delegation of powers and duties; books of account.

37-2-6. Community mental health, developmental disabilities, and addictive diseases service boards — Creation; membership; participation of counties; transfer of powers and duties; alternate method of establishment; bylaws; reprisals prohibited.

37-2-6.1. Community service boards — Program director, staff, budget, facilities; powers and duties; exemption from state and local taxation.

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37-2-6.2. Employees whose jobs include duties or functions which became duties or functions of a community service board on July 1, 1994; rights, duties, and benefits of employees.

37-2-6.3. Public body; debts, obligations, and liabilities.

37-2-6.4. Reconstituting or converting of organizational structure; formation of new community service board.

37-2-6.5. Cessation of operations by community service board; notification; continuation of operations by successor board, county board of health, or outside manager.

37-2-7. Formulation and publication of state plan for disability services.

37-2-8. Unification of state and area service programs [Repealed].

37-2-9. Coordination of disability services with related activities of other agencies and organizations.

37-2-9.1. Compliance by regional planning boards and community service boards with laws as to open meetings and inspection of records; advisory boards.

37-2-10. Commissioner's emergency powers upon failure of community service board to establish and administer programs.

37-2-11. Allocation of available funds for services; recipients to meet minimum standards; accounting for fees generated by providers; discrimination in providing services prohibited.

37-2-11.1. Venue in actions against community service board; representation by Attorney General; immunity; use of legal counsel;

Sec.
authority for indemnification, defense, and insurance.
37-2-11.2. Access by the department, Department of Human Services, Department of Public Health, Department of Community Health, or regional office to records of any program receiving public funds; confidentiality.
37-2-12. Construction of chapter to avoid conflict with federal laws [Repealed].

Article 2

Administration of Mental Disability Services

Part 1

Office of Disability Services Ombudsman

37-2-30. Definitions.
37-2-31. Creation of office of disability services ombudsman.
37-2-32. Nominating committee to identify qualified candidates for ombudsman; committee membership; terms of service of ombudsman.
37-2-33. Powers of ombudsman.
37-2-34. Ombudsman and other office personnel deemed members of department work force for certain purposes.
37-2-35. Duties of ombudsman.
37-2-36. Investigations.
37-2-37. Investigation report; referrals to division and other appropriate agencies.
37-2-38. Confidentiality; disclosure of information.
37-2-39. Notice of complaint procedure.
37-2-40. Discrimination or retaliation prohibited; sanctions.
37-2-41. Federal financial participation; documentation.
37-2-42. Immunity from civil and criminal liability for providing certain information to ombudsman.
37-2-43. Immunity from civil and criminal liability for filing complaint; ombudsman's immunity for actions related to discharge of duties.
37-2-44. Statutory construction.
37-2-45. Medical review group to review the deaths of consumers.
37-2-46. Notification of consumer's death; time limits.
37-2-47. Scope of part.

Part 2

Additional Powers and Duties

37-2-50. Additional powers and duties.

Cross references. — State health planning and development generally, T. 31, C. 6. Regulation and construction of hospitals and other health care facilities, T. 31, C. 7.

Editor's notes. — Ga. L. 1992, p. 1357, § 1 designated Code Sections 37-2-1 through 37-2-12 as Article 1 of this chapter and enacted Code Sections 37-2-30 [repealed] through 37-2-34, designated as Article 2.

Administrative rules and regulations. — Rules and regulations on "Mental Health and Mental Retardation and Substance Abuse," Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Chapters 290-4-1 and 290-4-3 et seq.

Law reviews. — For note on 1991 amendments to this chapter, see 8 Ga. St. U.L. Rev. 121 (1992).

RESEARCH REFERENCES

ALR. — Validity, construction, and effect of statute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill, 51 ALR4th 1096.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 1992, p. 1357, designated Code Sections 37-2-1 through 37-2-12 as Article 1 of this chapter.

37-2-1. Declaration of purpose.

(a) The State of Georgia recognizes its responsibility for its citizens who are mentally ill or developmentally disabled including individuals with epilepsy, cerebral palsy, autism, and other neurologically disabling conditions or who abuse alcohol, narcotics, or other drugs and recognizes an obligation to such citizens to meet their needs through a coordinated system of community facilities, programs, and services.

(b) It is the policy of this state to provide adequate mental health, developmental disability, addictive disease, and other disability services to all its citizens. It is further the policy of this state to provide such services through a unified system which encourages cooperation and sharing of resources among all providers of such services, both governmental and private.

(c) It is the purpose of this chapter to enable and encourage the development of comprehensive, preventive, early detection, habilitative, rehabilitative, and treatment disability services; to improve and expand community programs for the disabled; to provide continuity of care through integration of county, area, regional, and state services and facilities for the disabled; to provide for joint disability services and the sharing of manpower and other resources; and to monitor and restructure the system of providing disability services in the State of Georgia to make better use of the combined public and private resources of the state and local communities.

(d) The provisions of this chapter shall be liberally construed to achieve the objectives set forth in this Code section. (Code 1933, § 88-601, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1995, p. 1302, § 17; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Cross references. — Special education services for children who are physically, mentally, or emotionally disabled, § 20-2-152. State health planning and development generally, T. 31, C. 6. Coverage for autism, § 33-24-59.10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "the" was deleted following "encourage the" near the beginning of subsection (c).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chap-

ter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

JUDICIAL DECISIONS

Community service boards. — Limited sovereign immunity waiver was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee. A community service board was a state agency and was immune from a claim arising from the stabbing death of a resident at a community home run by the board. Limited sovereign immunity waiver in the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee; a community service board was a state agency, and was immune from a claim arising from the stabbing death of a resident at a community home run by the community service board. Oconee Cmty. Serv. Bd. v. Holsey, 266 Ga. App. 385, 597 S.E.2d 489 (2004).

Legislature did not intend for community service boards to be part of the Department of Human Resources (DHR) (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) or its employees to be department employees under ordinary circumstances; thus, a suit claiming that DHR was liable for the alleged negligence of a board employee should have been dismissed. Dep't of Human Res. v. Crews, 278 Ga. App. 56, 628 S.E.2d 191 (2006).

Cited in Lewis v. Griffin, 258 Ga. 887, 376 S.E.2d 364 (1989); Youngblood v. Gwinnett Rockdale Newton Community Serv. Bd., 273 Ga. 715, 545 S.E.2d 875 (2001); Summerlin v. Ga. Pines Cmty. Serv. Bd., 278 Ga. App. 831, 630 S.E.2d 115 (2006).

37-2-2. Definitions.

As used in this chapter, the term:

(1) "Community service board" means a public mental health, developmental disabilities, and addictive diseases board established pursuant to Code Section 37-2-6.

(2) "Community service board area" means an area inclusive of the counties which fall within the boundaries of a community service board as designated by the department pursuant to subsection (b) of Code Section 37-2-3 for the establishment of a community service board.

(3) "Community service board service area" means a community service board area and any other county or portion thereof in which the community service board provides services.

(4) "Council" means the Behavioral Health Coordinating Council established pursuant to Code Section 37-2-4.

(5) "Health services" means any education or service provided by the department, the Department of Public Health, or the Department of Human Services, either directly or by contract.

(6) "Hospital" means a state owned or state operated facility providing services which include, but are not limited to, inpatient care and the diagnosis, care, and treatment or habilitation of the disabled. Such hospital may also provide or manage state owned or operated programs in the community. (Code 1933, § 88-602, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1995, p. 1302, § 17; Ga. L. 2002, p. 1324, §§ 1-7, 2-2; Ga. L. 2006, p. 310, § 3/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in paragraph (5).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that those provisions of that Act which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective April 21, 2006.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Board employee not department employee. — Legislature did not intend for community service boards to be part of the Department of Human Resources (DHR) (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) or its employees to be department employees under ordinary circumstances; thus, a suit claiming that DHR was liable for the alleged negligence of a board employee should have been dismissed. Dep't of Human Res. v. Crews, 278 Ga. App. 56, 628 S.E.2d 191 (2006).

37-2-2.1. Creation of Division of Mental Health, Developmental Disabilities, and Addictive Diseases.

Repealed by Ga. L. 2009, p. 453, § 3-1/HB 228, effective July 1, 2009.

Editor's notes. — This Code section was based on Code 1981, § 37-2-2.1, enacted by Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7.

37-2-3. Designation of boundaries for mental health, development disabilities, and addictive diseases regions; community service board areas.

(a) The board shall designate boundaries for mental health, developmental disabilities, and addictive diseases regions and may modify the boundaries of such regions from time to time as deemed necessary by the board.

(b) The department, with the approval of the commissioner, shall designate community service board areas, which shall serve as boundaries for the establishment of community service boards within this state for the purpose of delivering disability services. The department shall be authorized to initiate the redesignation of such community service board area boundaries and may consider requests from a county or group of counties or a community service board or a group of community service boards for recommended changes to the boundaries of the community service board areas. The department, with the approval of the commissioner, is authorized to redesignate two or more contiguous community service board areas as a single community service board area upon the request of the community service boards serving such areas; and, if so authorized, the assets, equipment, and resources of such community service boards shall become the assets, equipment, and resources of the reconstituted community service board serving the successor single board area. It is the intent of the General Assembly not to limit a community service board to serving only those counties within the boundaries of its community service board area.

(c) To the extent practicable, the boundaries for regional planning boards and offices and community service areas shall not subdivide any county unit or conflict with any districts established by the Department

of Public Health and the state relating to the planning for, or delivery of, health services. In dividing the state into areas, the board and the department shall take into consideration such factors as geographic boundaries, roads and other means of transportation, population concentrations, city and county lines, other relevant community services, and community economic and social relationships. Consideration shall also be given to the existence of facilities and personnel available in the areas for the delivery of disability services. (Code 1933, § 88-604, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2006, p. 310, § 4/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of subsection (c).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that those provisions of that Act which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective April 21, 2006.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

37-2-4. Behavioral Health Coordinating Council; membership; meetings; obligations.

(a) There is created the Behavioral Health Coordinating Council. The council shall consist of the commissioner of behavioral health and developmental disabilities; the commissioner of community health; the commissioner of public health; the commissioner of human services; the commissioner of juvenile justice; the commissioner of corrections; the

commissioner of community affairs; the Commissioner of Labor; the State School Superintendent; the chairperson of the State Board of Pardons and Paroles; the ombudsman appointed pursuant to Code Section 37-2-32; an adult consumer of public behavioral health services, appointed by the Governor; a family member of a consumer of public behavioral health services, appointed by the Governor; a parent of a child receiving public behavioral health services, appointed by the Governor; a member of the House of Representatives, appointed by the Speaker of the House of Representatives; and a member of the Senate, appointed by the Lieutenant Governor.

(b) The commissioner of behavioral health and developmental disabilities shall be the chairperson of the council. A vice chairperson and a secretary shall be selected by the members of the council as prescribed in the council's bylaws.

(c) Meetings of the council shall be held quarterly, or more frequently, on the call of the chairperson. Meetings of the council shall be held with no less than five days' public notice for regular meetings and with such notice as the bylaws may prescribe for special meetings. Each member shall be given written notice of all meetings. All meetings of the council shall be subject to the provisions of Chapter 14 of Title 50. Minutes or transcripts shall be kept of all meetings of the council and shall include a record of the votes of each member, specifying the yea or nay vote or absence of each member, on all questions and matters coming before the council. No member may abstain from a vote other than for reasons constituting disqualification to the satisfaction of a majority of a quorum of the council on a recorded vote. No member of the council shall be represented by a delegate or agent.

(d) Except as otherwise provided in this Code section, a majority of the members of the council then in office shall constitute a quorum for the transaction of business. No vacancy on the council shall impair the right of the quorum to exercise the powers and perform the duties of the council. The vote of a majority of the members of the council present at the time of the vote, if a quorum is present at such time, shall be the act of the council unless the vote of a greater number is required by law or by the bylaws of the council.

(e) The council shall:

(1) Develop solutions to the systemic barriers or problems to the delivery of behavioral health services by making recommendations that implement funding, policy changes, practice changes, and evaluation of specific goals designed to improve services delivery and outcome for individuals served by the various departments;

(2) Focus on specific goals designed to resolve issues for provision of behavioral health services that negatively impact individuals serviced by at least two departments;

(3) Monitor and evaluate the implementation of established goals; and

(4) Establish common outcome measures.

(f)(1) The council may consult with various entities, including state agencies, councils, and advisory committees and other advisory groups as deemed appropriate by the council.

(2) All state departments, agencies, boards, bureaus, commissions, and authorities are authorized and required to make available to the council access to records or data which are available in electronic format or, if electronic format is unavailable, in whatever format is available. The judicial and legislative branches are authorized to likewise provide such access to the council.

(g) The council shall be attached to the Department of Behavioral Health and Developmental Disabilities for administrative purposes only as provided by Code Section 50-4-3.

(h)(1) The council shall submit annual reports of its recommendations and evaluation of their implementation to the Governor and the General Assembly.

(2) The recommendations developed by the council shall be presented to the board of each member department for approval or review at least annually.

(i) For purposes of this Code section, the term "behavioral health services" has the same meaning as "disability services" as defined in Code Section 37-1-1. (Code 1933, § 88-611, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 6/SB 244; Ga. L. 2011, p. 705, § 5-21/HB 214.)

The 2010 amendment, effective July 1, 2010, inserted "the commissioner of community affairs; the Commissioner of Labor; the State School Superintendent; the chairperson of the State Board of Pardons and Paroles; the ombudsman appointed pursuant to Code Section 37-2-32;" in the middle of subsection (a).

The 2011 amendment, effective July 1, 2011, inserted "the commissioner of public health;" near the middle of subsection (a).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Gov-

ernor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

37-2-4.1. Regional mental health, developmental disabilities, and addictive diseases offices.

(a) The department shall create regional mental health, developmental disabilities, and addictive diseases offices. The number of these offices may be modified from time to time as deemed necessary by the department.

(b) The department shall create a separate regional mental health, developmental disabilities, and addictive diseases planning board for each regional office established under subsection (a) of this Code section. Each board shall provide and facilitate coordinated and comprehensive planning for its region in conformity with minimum standards and procedures established by the department. Each board shall be designated with such identifying words before the term "regional mental health, developmental disabilities, and addictive diseases planning board" as that regional planning board may, from time to time, choose and designate by official action.

(c) The powers, functions, obligations, and duties of the regional mental health, mental retardation, and substance abuse boards as they existed on June 30, 2002, are transferred to the department. The department shall succeed to all rights, privileges, entitlements, contracts, leases, agreements, and other transactions of the regional boards which were in effect on June 30, 2002, and none of those rights, privileges, entitlements, contracts, leases, agreements, and other transactions shall be impaired or diminished by reason of such transfer. In all such instances, the department shall be substituted for such regional board and the department shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions. (Code 1981, § 37-2-4.1, enacted by Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon what-

ever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

37-2-5. Regional planning boards — Establishing policy and direction for disability services; membership; bylaws; meetings; expenses.

(a) Each regional planning board shall engage in disability services planning including job supports and housing within its region and shall perform such other functions as may be provided or authorized by law.

(b) Membership on the regional planning board within an established region shall be determined as follows:

(1) Each county with a population of 50,000 or less according to the United States decennial census of 1990 or any future such census shall appoint one member to the board;

(2) Each county with a population of more than 50,000 according to the United States decennial census of 1990 or any future such census shall appoint one member for each population increment of 50,000 or any portion thereof;

(3) The appointment or appointments for each county shall be made by the county governing authority; and

(4) The county governing authority shall appoint a consumer of disability services, a family member of a consumer, an advocate for disability services, or a local leader or business person with an interest in mental health, developmental disabilities, and addictive diseases; provided, however, that for counties with more than one appointment, the county governing authority shall seek to ensure that such appointments represent various groups and disability services.

(b.1) A county governing authority may appoint the school superintendent, a member of the county board of health, a member of the local board of education, or any other elected or appointed official to serve on the regional planning board, provided that such person meets the qualifications of paragraph (4) of subsection (b) of this Code section, such person does not serve on a community service board, and such appointment does not violate the provisions of Chapter 10 of Title 45.

(b.2)(1) A person shall not be eligible to be appointed to or serve on a regional planning board if such person is:

(A) A member of the community service board which serves that region; or

(B) An employee or board member of a private or public entity which contracts with the department, the Department of Human Services, or the Department of Public Health to provide health, mental health, developmental disabilities, or addictive diseases services within the region;

(C) An employee of such regional office or employee or board member of any private or public group, organization, or service provider which contracts with or receives funds from such regional office; or

(D) An employee or board member of the department, the Department of Human Services, or the Department of Public Health.

(2) A person shall not be eligible to be appointed to or serve on a regional planning board if such person's spouse, parent, child, or sibling is a member of that regional planning board or a member, employee, or board member specified in paragraph (1) of this subsection. No person who has served a full term or more on a regional board or regional planning board may be appointed to a community service board until a period of at least two years has passed since the time such person served on the regional board or the regional planning board. No person who has served on a regional board and who becomes a member of a regional planning board on June 30, 2002, may be appointed to a community service board until a period of at least two years has passed since the time such person has served on the regional planning board.

(c) In making appointments to the regional planning board, the various county governing authorities shall ensure that appointments are reflective of the cultural and social characteristics, including gender, race, ethnic, and age characteristics, of the regional and county populations. The county governing authorities are further encouraged to ensure that each disability group is viably represented on the regional planning board, and in so doing the county governing authority may consider suggestions for appointments from clinical professional associations as well as advocacy groups, including but not limited to the Georgia Mental Health Consumer Network, People First of Georgia, the Georgia Parent Support Network, National Alliance for the Mentally Ill Georgia, the American Association for Retired Persons, Georgians for Children, Mental Health America of Georgia, Georgia ARC Network, and the Georgia Council on Substance Abuse and their local chapters and affiliates.

(d)(1) In addition, members of the regional mental health, mental retardation, and substance abuse boards in office on June 30, 2002,

shall become members of the regional planning board for the area in which they reside on July 1, 2002, and shall serve out the balance of their terms.

(2) The initial term of a new member of a regional planning board shall be determined by the commissioner in order to establish staggered terms on the board. At such time as the terms of the members of the board are equally staggered, the term of a member of the regional planning board shall be for a period of three years and until the member's successor is appointed and qualified. A member may serve no more than two consecutive terms. The term of a regional planning board member shall terminate upon resignation, death, or inability to serve due to medical infirmity or other incapacity or such other reasonable condition as the regional planning board may impose under its bylaws. Vacancies on the regional planning board shall be filled in the same manner as the original appointment.

(e) Prior to August 1, 2002, each regional planning board shall adopt bylaws governing its operation and management. At a minimum, the bylaws shall provide for staggered terms of the board, requirements for an annual meeting to elect officers, a mechanism for ensuring that consumers of disability services and family members of consumers constitute a majority of the appointments to the board, and a mechanism for ensuring that each disability service is equitably represented by appointments to the board. Any board member who serves an initial term of less than three years may be eligible to be reappointed for two full consecutive three-year terms. The chairperson and vice chairperson of the regional planning board shall be elected from among the members of the board to serve a term of one year with the option of reelection for an additional one-year term. The bylaws shall provide for any other officers and their means of selection, as well as any necessary committees or subcommittees of the board. Prior to their adoption by the regional planning board, the bylaws shall be submitted to the department for review and approval. The regional planning board must have the written approval of the commissioner prior to the adoption of bylaws.

(f) The regional planning board shall meet not less than once every two months, beginning on July 1 and continuing through the next June 30, which time frame shall be the fiscal year for each regional planning board.

(g) Each member of the regional planning board may, upon approval of the regional coordinator, receive reimbursement for actual expenses incurred in carrying out the duties of such office in conformance with rates and allowances set for state employees by the Office of Planning and Budget and the same mileage allowance for use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier.

(h) Each regional planning board which is composed of members who are appointed thereto by the governing authority of only one county shall have a minimum of six members, notwithstanding the provisions of subsection (b) of this Code section, which members shall in all other respects be appointed as provided in this Code section. (Code 1933, §§ 88-605, 88-606, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 2; Ga. L. 2000, p. 440, § 2; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in subparagraphs (b.2)(1)(B) and (b.2)(1)(D).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Property interest of participants in supportive living program. — Rules and regulations of state and local supportive living program give participants in the program a property interest subject to due process including an evidentiary hearing prior to termination from the program. Fields v. Pittman, 571 F. Supp. 32 (N.D. Ga. 1983).

37-2-5.1. Regional planning boards — Regional coordinator; staff and personnel; allocation of funds.

(a) Each region shall be served by a regional coordinator who shall be duly qualified and appointed by the commissioner. The regional coordinator shall serve as the supervisor of the regional office, which shall be a unit of the department. The regional coordinator shall serve at the pleasure of the commissioner. The commissioner shall be authorized to appoint an interim regional coordinator at any time that the position of regional coordinator is vacant and prior to the appointment of a duly qualified and approved successor.

(b) The regional coordinator may appoint such other staff including a regional services administrator and personnel to work for the regional office as the department deems necessary and appropriate. The regional coordinator and such staff and personnel shall be employees of the department. Expenses for the regional office and planning board, the employment of the regional coordinator, other staff and personnel, and the operation of the regional office shall be funded by the department as funds are appropriated by the General Assembly. The department shall impose limits on the administrative and operating expenditures of the regional office and planning board.

(c)(1) State, federal, and other funds appropriated to the department and available for the purpose of funding the planning and delivery of disability services shall be distributed in accordance with this subsection. All funds associated with services to clients residing within a given region shall be managed through the department; the term "all funds" shall include funding for hospitals, community service boards, private and public contracts, and any contracts relating to service delivery for clients within the given region. The department shall establish a funding amount for regions conditioned upon the amount of funds appropriated. The funding amount shall be determined, in part, based on consumer service needs, service and program history, population based funding needs, infrastructure mandates, program efficiency and effectiveness, geographic distances, and other factors affecting the cost and level of service needs within each region.

(2) The department shall establish guidelines to ensure that regions receive such funding based on client population, past and future service delivery needs and capabilities, and in consideration of special needs populations, such as homeless and transient populations. The department shall ensure that funds are managed based primarily on services to clients and in compliance with all federal, state, and regulatory requirements.

(3) The department, in compliance with the provisions of the General Appropriations Act and other applicable laws, is authorized to move funds to and between community and institutional programs based on need, and the department shall develop appropriate allocation and accounting mechanisms to move funds in a planned and rational manner between hospitals, community service boards, and other providers based on client needs and utilization. (Code 1981, § 37-2-5.1, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 3; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified

by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which enacts this Code section, provides, in § 19.1, not codified by the General Assembly, that this Code section is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Hiring and firing executive director. — Executive director (now regional coordinator) of a regional board may be hired by the state division director only with the approval of the regional board, and may be fired by the state division director, either on the division director's own initiative or in compliance with the request of a majority of the regional board membership. 1995 Op. Att'y Gen. No. U95-3.

37-2-5.2. Regional planning boards — Duties and functions; power to contract; delegation of powers and duties; books of account.

(a) Under the supervision of the department, each regional office shall have the following duties and functions:

(1) To prepare, in consultation with consumers and families, community programs, hospitals, other public and private providers, its regional planning board, and appropriate advisory and advocacy groups, an annual plan identifying the needs and priorities for disability services in the region. The plan shall be submitted to the department at a time and in the manner specified by the department so as to ensure that the plan informs the annual appropriations request;

(2) To provide, as funds become available, for consumer assessment and service authorization and coordination for each consumer receiving services within the region;

(3) To exercise responsibility and authority as specified in this chapter within the region in all matters relating to the funding and delivery of disability services;

(4) To receive and administer grants, gifts, moneys, and donations for purposes pertaining to mental health, developmental disability, and addictive disease services;

(5) To enter into contracts on behalf of the department with any hospital, community service board, or other public or private provid-

ers without regard to regional or state boundaries for the provision of disability services, and to enter into all contracts on behalf of the department necessary or incidental to the performance of duties and functions of the department and regional office;

(6) To encourage the development, in cooperation with the department, of private and public providers of programs and disability services which respond to the needs of consumers and families of consumers within the region;

(7) To serve as the representative of the citizens of the area in regard to disability services;

(8) To receive and consider complaints and grievances submitted by individuals, associations, or agencies involved with the delivery or receipt of disability services and, if deemed appropriate, to seek resolution, through processes which may include impartial mediation and alternative dispute resolution, of such complaints and grievances with the appropriate hospital, community service board, or other private or public provider of service;

(9) To assure the highest achievable level of public awareness and understanding of both available and needed disability services;

(10) To visit regularly disability services facilities and programs which serve the region in order to assure contracted providers are licensed and accredited by the designated agencies prescribed by the department, and in order to evaluate the effectiveness and appropriateness of the services, as such services relate to the health, safety, and welfare of service recipients, and to provide technical assistance to programs in delivering services; and

(11) To participate with other regional offices and planning boards, the department, local, state, or federal government agencies, educational institutions, and public and private organizations in the coordination of planning, research, service development, and evaluation activities:

(A) To work cooperatively with all units of county and local government, including the county boards of health, within the region;

(B) To establish goals and objectives, not inconsistent with those established by the department, for its region; and

(C) To participate in the establishment and operation of a data base and network, coordinated by the department, to serve as a comprehensive management information system for disability services and programs.

(b) It is the express intent of this chapter to confer upon the regional offices as the administrative entities of the department the flexibility,

responsibility, and authority necessary to enter into contracts on behalf of the department with a wide range of public and private providers to ensure that consumers are afforded cost-effective, locally based, and quality disability services. Under the supervision of the department, regional offices are specifically authorized to enter into contracts on behalf of the department directly with any county governing authority, any disability services organization created or designated by such county governing authority, any county board of health, any private or public provider, or any hospital for the provision of disability services.

(c) Each regional office shall account for all funds received, expended, and administered and shall make reports to the department regarding the funds received from the department. The audit of such activity shall be part of the annual audit of the department. (Code 1981, § 37-2-5.2, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 7/SB 244; Ga. L. 2010, p. 878, § 37/HB 1387.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, in paragraph (a)(1), substituted "identifying the needs and priorities for" for "for the funding and provisions of all" in the first sentence and substituted "informs" for "is a basis for" near the end of the last sentence. The second 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (a)(8).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which enacts this Code section, provides, in § 19.1, not codified by the General Assembly, that this Code section is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed this Code section.

37-2-6. Community mental health, developmental disabilities, and addictive diseases service boards — Creation; membership; participation of counties; transfer of powers and duties; alternate method of establishment; bylaws; reprisals prohibited.

(a) Community service boards in existence on June 30, 2006, are re-created effective July 1, 2006, to provide mental health, developmental disabilities, and addictive diseases services. Effective July 1, 2009, such community service boards may enroll and contract with the

department, the Department of Human Services, the Department of Public Health, or the Department of Community Health to become a provider of mental health, developmental disabilities, and addictive diseases services or health, recovery, housing, or other supportive services. Such boards shall be considered public agencies. Each community service board shall be a public corporation and an instrumentality of the state; provided, however, that the liabilities, debts, and obligations of a community service board shall not constitute liabilities, debts, or obligations of the state or any county or municipal corporation and neither the state nor any county or municipal corporation shall be liable for any liability, debt, or obligation of a community service board. Each community service board re-created pursuant to this Code section is created for nonprofit and public purposes to exercise essential governmental functions. The re-creation of community service boards pursuant to this Code section shall not alter the provisions of Code Section 37-2-6.2 which shall apply to those re-created community service boards and their employees covered by that Code section and those employees' rights are retained.

(b) Each community service board shall consist of members appointed by the governing authorities of the counties within the community service board area. Membership on such community service board shall be determined as follows:

(1)(A) The governing authority of each county within the community service board area:

(i) With a population of 50,000 or less according to the most recent United States decennial census shall appoint one member to the board; and

(ii) With a population of more than 50,000 according to the most recent United States decennial census shall appoint one member for each population increment of 50,000 or any portion thereof; or

(B) In the event that the number of community service board member positions established in accordance with subparagraph (A) of this paragraph would exceed 13, the membership of such community service board pursuant to this subsection shall be appointed as follows and the bylaws shall be amended accordingly:

(i) For community service boards whose community service board area contains 13 or fewer counties, the board shall be set at 13 members and appointments to the board shall be made by the governing authority of each county within the community service board area in descending order from the county with the largest population to the county with the smallest population according to the most recent United States decennial census and

this method shall be repeated until all 13 members of the community service board are appointed. If a county governing authority fails to make an appointment within a reasonable time, the next descending county by population shall make an appointment and the method shall continue; and

(ii) For community service boards whose community service board area contains more than 13 counties, one member of the community service board shall be appointed by the governing authority of each county within the community service board area, so that the number of members on the board is equal to the number of counties in the community service board area.

The county governing authority shall appoint as at least one of its appointments a consumer of disability services, a child psychiatrist, a child psychologist, a family member of a consumer, an advocate for disability services, a parent of a child with mental illness or addictive disease, or a local leader or businessperson with an interest in mental health, developmental disabilities, and addictive diseases; provided, however, that for counties with more than one appointment, the county governing authority shall seek to ensure that such appointments represent various groups and disability services;

(2) In addition to the members appointed pursuant to paragraph (1) of this subsection, each community service board may appoint up to three additional members in order to address variation in the population sizes of counties or the financial contributions of counties within the community service board area or may authorize the elected chief executive officer of a county governing authority, by whatever name called, or an elected member of that county governing authority to serve on the community service board while holding such elective office. The bylaws of the community service board shall address the number of such additional members, if any, and the purpose or purposes for which such positions are created. The term of office of such additional members shall be the same as that of other members as provided in subsection (h) of this Code section; except that the term of office of a member in a position created to authorize the elected chief executive officer of a county governing authority, by whatever name called, or an elected member of that county governing authority to serve on the community service board shall be the same term of office as the elective term of office of said chief executive officer or said member of that county governing authority;

(3) Each community service board in existence on June 30, 2006, shall reconstitute its membership in accordance with the provisions of paragraphs (1) and (2) of this subsection, effective July 1, 2006, as follows:

(A) A community service board which increases or reduces the number of its members in accordance with paragraphs (1) and (2) of this subsection shall revise its bylaws adopted in accordance with subsection (h) of this Code section to reflect such increases or reductions. A community service board which reduces the number of its members shall designate which position or positions are to be eliminated and shall make reasonable efforts to eliminate any position or positions of members whose terms expire on or before June 30, 2006; provided, however, that members serving on a community service board whose terms do not expire on or before June 30, 2006, shall continue to serve out the terms of office to which they were appointed, regardless of whether this causes a board to temporarily exceed the maximum number of members. Any additional positions created in conformity with such paragraphs (1) and (2) may be filled on July 1, 2006, and the governing authority of a county that is otherwise authorized to appoint such additional community service board member or members may do so no sooner than May 1, 2006, but any person so appointed shall not take office until July 1, 2006. If a position on such community service board is not filled on July 1, 2006, a vacancy in that position shall be deemed to have occurred on that date. A community service board is authorized to make whatever changes necessary in the terms of office of its members in order to achieve the staggering of terms required by subsection (h) of this Code section; and

(B) The term of office of an ex officio, voting member of a community service board holding membership on June 30, 2006, shall expire on June 30, 2006; and

(4)(A) A person shall not be eligible to be appointed to or serve on a community service board if such person is:

(i) A member of the regional planning board which serves the region in which that community service board is located;

(ii) An employee or board member of a public or private entity which contracts with the department, the Department of Human Services, the Department of Public Health, or the Department of Community Health to provide mental health, developmental disabilities, and addictive diseases services or health services within the region; or

(iii) An employee of that community service board or employee or board member of any private or public group, organization, or service provider which contracts with or receives funds from that community service board.

(B) A person shall not be eligible to be appointed to or serve on a community service board if such person's spouse, parent, child, or

sibling is a member of that community service board or a member, employee, or board member specified in this paragraph. With respect to appointments by the same county governing authority, no person who has served a full term or more on a community service board may be appointed to a regional planning board until a period of at least two years has passed since the time such person served on the community service board, and no person who has served a full term or more on a regional planning board may be appointed to a community service board until a period of at least two years has passed since the time such person has served on the regional planning board.

(5) A community service board created in accordance with this subsection shall reconstitute its membership in conformity with the most recent United States decennial census in accordance with subparagraph (d)(2)(C) of Code Section 1-3-1.

(b.1) A county governing authority may appoint the school superintendent, a member of the county board of health, a member of the board of education, or any other elected or appointed official to serve on the community service board provided that such person meets the qualifications of paragraph (1) of subsection (b) of this Code section and such appointment does not violate the provisions of Chapter 10 of Title 45. For terms of office which begin July 1, 1994, or later, an employee of the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) or an employee of a county board of health shall not serve on a community service board. For terms of office which begin July 1, 2009, or later, an employee of the department, the Department of Human Services, the Department of Public Health, or the Department of Community Health or a board member of the respective boards of each department shall not serve on a community service board.

(c) In making appointments to the community service board, the county governing authorities shall ensure that such appointments are reflective of the cultural and social characteristics, including gender, race, ethnic, and age characteristics, of the community service board area and county populations. The county governing authorities are further encouraged to ensure that each disability group is represented on the community service board, and in making such appointments the county governing authorities may consider suggestions from clinical professional associations as well as advocacy groups. For the purposes of this subsection, "advocacy groups" means any organizations or associations that advocate for, promote, or have an interest in disability services and are exempted as a charitable organization from federal income tax pursuant to Section 501(c) of the Internal Revenue Code; provided, however, that "advocacy groups" shall not mean paid providers of disability services or health services.

(c.1) A county governing authority in making appointments to the community service board shall take into consideration that at least one member of the community service board is an individual who is trained or certified in finance or accounting; provided, however, that if after a reasonable effort at recruitment there is no person trained or certified in finance or accounting within the community service board area who is willing and able to serve, the county governing authority may consider for appointment any other person having a familiarity with financial or accounting practices.

(d) Each county in which the governing authority of the county is authorized to appoint members to the community service board shall participate with the board in the operation of the program through the community service board. All contractual obligations, including but not limited to real estate leases, rentals, and other property agreements, other duties, rights, and benefits of the mental health, developmental disabilities, and addictive diseases service areas in existence on June 30, 2006, shall continue to exist along with the new powers granted to the community service boards effective July 1, 2006.

(e) Notwithstanding any other provision of this chapter, a community service board may be constituted in a method other than that outlined in subsection (b) of this Code section if:

(1) A board of health of a county desiring to be the lead county board of health for that county submits a written agreement to the former Division of Mental Health, Developmental Disabilities, and Addictive Diseases (now known as the Department of Behavioral Health and Developmental Disabilities) of the former Department of Human Resources before July 1, 1993, to serve as the community service board and to continue providing disability services in that county after July 1, 1994, and the governing authority for that county adopted a resolution stating its desire to continue the provision of disability services through its board of health after July 1, 1994, and submitted a copy of such resolution to the former division before July 1, 1993; or

(2)(A) The lead county board of health for a community mental health, mental retardation, and substance abuse service area, as designated by the former Division of Mental Health, Developmental Disabilities, and Addictive Diseases (now known as the Department of Behavioral Health and Developmental Disabilities) of the former Department of Human Resources on July 15, 1993, but which area excludes any county which meets the requirements of paragraph (1) of this subsection, submitted a written agreement to the former division and to all counties within such service area to serve as the community service board for that area and to continue providing disability services after July 1, 1994, which agreement was submitted between July 31, 1993, and December 31, 1993; and

(B) Each county governing authority which is within the service area of a lead county board of health which has submitted an agreement pursuant to subparagraph (A) of this paragraph adopted a resolution stating its desire to continue the provision of disability services through such lead county board of health after July 1, 1994, and submitted a copy of that resolution to the former division, the regional board, and the lead county board of health between July 31, 1993, and December 31, 1993; and

(3) The lead county board of health qualifying as such under paragraph (1) or (2) of this subsection agrees in writing to appoint a director for mental health, mental retardation, and substance abuse other than the director of the county board of health as stipulated in Code Section 31-3-12.1, to appoint an advisory council on mental health, mental retardation, and substance abuse consisting of consumers, families of consumers, and representatives from each of the counties within the boundaries of the community service board, and to comply with all other provisions relating to the delivery of disability services pursuant to this chapter.

(f) If the conditions enumerated in subsection (e) of this Code section are not met prior to or on December 31, 1993, a community service board as provided in subsection (b) shall be established and appointed by January 31, 1994, to govern the provision of disability services within the boundaries of the community service board. Such community service board shall have the authority to adopt bylaws and undertake organizational and contractual activities after January 31, 1994; provided, however, that the community service board established pursuant to this Code section may not begin providing services to clients until July 1, 1994.

(g) If a community service board is established pursuant to paragraph (2) of subsection (e) of this Code section, such community service board must operate as established at least until June 30, 1996; provided, however, that in each fiscal year following June 30, 1996, the counties included under the jurisdiction of such a community service board may vote to reconstitute the community service board pursuant to the provisions of subsection (b) of this Code section by passage of a resolution by a majority of the county governing authorities within the jurisdiction of the community service board prior to January 1, 1997, or each year thereafter.

(h) Each community service board shall adopt bylaws and operational policies and guidelines in conformity with the provisions of this chapter. Those bylaws shall address board appointment procedures, initial terms of board members, the staggering of terms, quorum, a mechanism for ensuring that consumers of disability services and family members of consumers constitute no less than 50 percent of the

board members appointed pursuant to subsection (b) of this Code section, and a mechanism for ensuring equitable representation of the various disability groups. A quorum for the transaction of any business and for the exercise of any power or function of the community service board shall consist of a majority of the total number of filled board member positions appointed pursuant to subsection (b) of this Code section. A vote of the majority of such quorum shall be the act of the governing board of the community service board except where the bylaws of the community service board may require a greater vote. The regular term of office for each community service board member shall be three years. Vacancies on such board shall be filled in the same manner as the original appointment. For the purposes of this subsection, "equitable representation of the various disability groups" shall mean that consumers and family members of such consumers who constitute no less than 50 percent of the board members holding membership pursuant to subsection (b) of this Code section shall be appointed so as to assure that an equal number of such members to the fullest extent possible represents mental health, developmental disabilities, and addictive diseases interests.

(i) Each community service board which is composed of members who are appointed thereto by the governing authority of only one county shall have a minimum of six and no more than 13 members, not including any additional members appointed pursuant to paragraph (2) of subsection (b) of this Code section, notwithstanding the provisions of subsection (b) of this Code section, which members in all other respects shall be appointed as provided in this Code section.

(j) No officer or employee of a community service board who has authority to take, direct others to take, recommend, or approve any personnel action shall take or threaten action against any employee of a community service board as a reprisal for making a complaint or disclosing information concerning the possible existence of any activity constituting fraud, waste, or abuse in or relating to the programs, operations, or client services of the board to the board or to a member of the General Assembly unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity. Any action taken in violation of this subsection shall give the public employee a right to have such action set aside in a proceeding instituted in the superior court.

(k) A member of a community service board who after notice that such member has failed to complete any required training prescribed by the department pursuant to paragraph (6) of Code Section 37-1-20 continues such failure for 30 days may be removed from office by the remaining members of the community service board.

(l) A member of a community service board may resign from office by giving written notice to the executive director of the community service

board. The resignation is irrevocable after delivery to such executive director but shall become effective upon the date on which the notice is received or on the effective date given by the member in the notice, whichever date is later. The executive director, upon receipt of the resignation, shall give notice of the resignation to the remaining members of the community service board and to the chief executive officer or governing authority of the county that appointed the member.

(m) The office of a member of a community service board shall be vacated upon such member's resignation, death, or inability to serve due to medical infirmity or other incapacity, removal by the community service board as authorized in this Code section or upon such other reasonable condition as the community service board may impose under its bylaws.

(n) A member of a community service board may not enter upon the duties of office until such member takes the following oath of office:

STATE OF GEORGIA

COUNTY OF _____

I, _____, do solemnly swear or affirm that I will truly perform the duties of a member of the _____ Community Service Board to the best of my ability.

I do further swear or affirm:

(1) That I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;

(2) That I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I am by the laws of the State of Georgia prohibited from holding;

(3) That I am otherwise qualified to hold said office according to the Constitution and the laws of Georgia; and

(4) That I will support the Constitution of the United States and this state.

_____

Signature of member of

_____ Community Service Board

_____

Typed name of member of

_____ Community Service Board

Sworn and subscribed
before me this _____ day
of _____, _____.
(SEAL)

(Code 1933, § 88-607, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 4; Ga. L. 1999, p. 860, § 1; Ga. L. 2002, p. 1324, §§ 1-7, 2-3; Ga. L. 2006, p. 310, § 5/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2011, p. 705, § 5-22/HB 214.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that" for "provided, however," in the fourth sentence of subsection (a) and in subsection (c.1).

The 2011 amendment, effective July 1, 2011, inserted "the Department of Public Health," in the second sentence of subsection (a), in division (b)(4)(A)(ii), and in the last sentence of subsection (b.1).

Cross references. — Complaints or information from public employees as to fraud, waste, and abuse in state programs and operations, § 45-1-4.

Editor's notes. — Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that those provisions of that Act which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective April 21, 2006.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Sovereign immunity. — Considering the public purpose for which the boards were created, a community service board is a "state department or agency" entitled to raise the defense of sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Par. IX. Youngblood v. Gwinnett Rockdale Newton Community Serv. Bd., 273 Ga. 715, 545 S.E.2d 875 (2001).

Because community service boards are agencies or departments of the state, accordingly, the legislature acted unconstitutionally when the legislature ignored Ga. Const. 1983, Art. I, Sec. II, Par. IX(e) and the express terms of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., by enacting O.C.G.A. § 37-2-11.1(c)(1) so as to denominate these newly-created state agencies or departments as unclassified public entities to be accorded the same immunity as counties. Youngblood v. Gwinnett Rockdale Newton Community Serv. Bd., 273 Ga. 715, 545 S.E.2d 875 (2001).

Limited sovereign immunity waiver was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee. A com-

munity service board was a state agency and was immune from a claim arising from the stabbing death of a resident at a community home run by the board. Oconee Cmty. Serv. Bd. v. Holsey, 266 Ga. App. 385, 597 S.E.2d 489 (2004).

Community service board (CSB) was not entitled to Eleventh Amendment immunity against a former employee's Americans with Disabilities Act claims because: (1) for the purpose of litigation, the Georgia General Assembly in O.C.G.A. § 37-2-11.1(c)(1) defined a CSB as being akin to a county, which was not an arm of the state entitled to immunity; and (2) when it came to debt and liability, a CSB was autonomous pursuant to O.C.G.A. § 37-2-6(a); although other factors cut in favor of CSB entitlement to Eleventh Amendment immunity, including the state's exercise of some control over a CSB pursuant to O.C.G.A. § 37-2-10(b) and a CSB partial state funding, such factors were afforded less weight by the court. Johnson v. Ogeechee Behavioral Health Servs., 479 F. Supp. 2d 1357 (S.D. Ga. 2007).

Because O.C.G.A. § 37-2-11.1 stated community service boards (CSB) were not agencies of the state or any specific county and that the boards had the same immunity as counties and counties were not arms of the state and did not have Eleventh Amendment immunity, the defendant, a CSB former employer, was not entitled to Eleventh Amendment immunity on a plaintiff former employee's discrimination claim; it was noted that counties had significant control over the policy and decisions made by CSB in that counties appoint board members under O.C.G.A. § 37-2-6(b) and the counties served could allow CSB to privatize or join the county government under O.C.G.A. § 37-2-6.4(a), which was especially cogent, because it meant CSB, without state approval, could take itself outside of the state's control, and under O.C.G.A. § 37-2-6.5(a), CSB had to get county approval to dissolve. Peery v. Serenity Behavioral Health Sys., No. CV106-172, 2009 U.S. Dist. LEXIS 37819 (S.D. Ga. May 4, 2009).

Property interest of participants in supportive living program. — Rules and regulations of state and local supportive living program give participants in the program a property interest subject to due process including an evidentiary hearing prior to termination from the program. Fields v. Pittman, 571 F. Supp. 32 (N.D. Ga. 1983).

37-2-6.1. Community service boards — Program director, staff, budget, facilities; powers and duties; exemption from state and local taxation.

(a) Each community service board shall employ an executive director to serve as its chief executive officer who shall direct the day-to-day operations of the community service board. Such executive director shall be appointed and removed by the community service board and shall appoint other necessary staff pursuant to an annual budget adopted by the board, which budget shall provide for securing appropriate facilities, sites, and professionals necessary for the provision of disability and health services. The community service board may delegate any power, authority, duty, or function to its executive director or other staff. The executive director or other staff is authorized to exercise any power, authority, duty, or function on behalf of the community service board.

(b) Each community service board, under the jurisdiction of its board, shall perform duties, responsibilities, and functions and may

exercise power and authority described in this subsection. Each program may exercise the following power and authority:

(1) Each community service board may adopt bylaws for the conduct of its affairs; provided, however, that the community service board shall meet at least quarterly, and that all such meetings and any bylaws shall be open to the public, as otherwise required under Georgia law;

(2) Each community service board may make and enter into all contracts necessary and incidental to the performance of its duties and functions;

(3) Each community service board may acquire by purchase, gift, lease, or otherwise and may own, hold, improve, use, and sell, convey, exchange, transfer, lease, sublease, and dispose of real and personal property of every kind and character, or any interest therein, for its corporate purposes;

(4) Each community service board may contract to utilize the services of the Department of Administrative Services, the state auditor, or any other agency of state, local, or federal government;

(5) Each community service board may provide, either independently or through contract with appropriate state or local governmental entities, the following benefits to its employees, their dependents, and survivors, in addition to any compensation or other benefits provided to such persons:

(A) Retirement, pension, disability, medical, and hospitalization benefits, through the purchase of insurance or otherwise, but medical and hospitalization benefits may only be provided through the Department of Community Health under the same conditions as provided for such benefits to state employees, and the Department of Community Health shall so provide if requested;

(B) Life insurance coverage and coverage under federal old age and survivors' insurance programs;

(C) Sick leave, annual leave, and holiday leave; and

(D) Any other similar benefits including, but not limited to, death benefits;

(6) Each community service board may cooperate with all units of local government in the counties where the community service board provides services as well as neighboring regions and with the programs of other departments, agencies, and regional commissions and regional planning boards;

(7) Each community service board shall establish and maintain a personnel program for its employees and fix the compensation and

terms of compensation of its employees; provided, however, that each community service board shall comply with the provisions of Chapter 20 of Title 45, for so long as and to the extent that each employee of such board remains subject to the rules and regulations of the State Personnel Board or as otherwise provided by law;

(8) Each community service board may receive and administer grants, gifts, contracts, moneys, and donations for purposes pertaining to the delivery of disability services or of health services;

(9) Each community service board may establish fees for the provision of disability services or health services according to the terms of contracts entered into with the department, Department of Human Services, Department of Public Health, or Department of Community Health, as appropriate;

(10) Each community service board may accept appropriations, loans of funds, facilities, equipment, and supplies from local governmental entities in the counties where the community service board provides services;

(11) Each member of the community service board may, upon approval of the executive director, receive reimbursement for actual expenses incurred in carrying out the duties of such office; provided, however, that such reimbursement shall not exceed the rates and allowances set for state employees by the Office of Planning and Budget or the mileage allowance for use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier;

(12) Each community service board shall elect a chairperson and vice chairperson from among its membership. The members shall also elect a secretary and treasurer from among its membership or may designate the executive director of the community service board to serve in one or both offices. Such officers shall serve for such terms as shall be prescribed in the bylaws of the community service board or until their respective successors are elected and qualified. No member shall hold more than one office of the community service board; except that the same person may serve as secretary and treasurer. The bylaws of the community service board shall provide for any other officers of such board and the means of their selection, the terms of office of the officers, and an annual meeting to elect officers;

(13) Each community service board may have a seal and alter it;

(14) Each community service board may establish fees, rates, rents, and charges for the use of facilities of the community service board for the provision of disability services or of health services, in

accordance with the terms of contracts entered into with the department, Department of Human Services, Department of Public Health, or Department of Community Health, as appropriate;

(15) Each community service board may borrow money for any business purpose and may incur debt, liabilities, and obligations for any business purpose. A debt, liability, or obligation incurred by a community service board shall not be considered a debt, liability, or obligation of the state or any county or any municipality or any political subdivision of the state. A community service board may not borrow money as permitted by this Code section if the highest aggregate annual debt service requirements of the then current fiscal year or any subsequent year for outstanding borrowings of the community service board, including the proposed borrowing, exceed 15 percent of the total revenues of the community service board in its fiscal year immediately preceding the fiscal year in which such debt is to be incurred. Interest paid upon such borrowings shall be exempt from taxation by the state or its political subdivisions. A state contract with a community service board shall not be used or accepted as security or collateral for a debt, liability, or obligation of a community service board without the prior written approval of the commissioner;

(16) Each community service board, to the extent authorized by law and the contract for the funds involved, may carry forward without lapse fund balances and establish operating, capital, and debt reserve accounts from revenues and grants derived from state, county, and all other sources; and

(17) Each community service board may operate, establish, or operate and establish facilities deemed by the community service board as necessary and convenient for the administration, operation, or provision of disability services or of health services by the community service board and may construct, reconstruct, improve, alter, repair, and equip such facilities to the extent authorized by state and federal law.

(c) Nothing shall prohibit a community service board from contracting with any county governing authority, private or other public provider, or hospital for the provision of disability services or of health services.

(d) Each community service board exists for nonprofit and public purposes, and it is found and declared that the carrying out of the purposes of each community service board is exclusively for public benefit and its property is public property. Thus, no community service board shall be required to pay any state or local ad valorem, sales, use, or income taxes.

(e) A community service board shall not have the power to tax, the power to issue general obligation bonds or revenue bonds or revenue certificates, or the power to financially obligate the state or any county or any municipal corporation.

(f) A community service board shall not operate any facility for profit. A community service board may fix fees, rents, rates, and charges that are reasonably expected to produce revenues, which, together with all other funds of the community service board, will be sufficient to administer, operate, and provide the following:

(1) Disability services or health services;

(2) The cost of acquiring, constructing, equipping, maintaining, repairing, and operating its facilities; and

(3) The creation and maintenance of reserves sufficient to meet principal and interest payments due on any obligation of the community service board.

(g) Each community service board may provide reasonable reserves for the improvement, replacement, or expansion of its facilities and services. Reserves under this subsection shall be subject to the limitations in paragraph (15) of subsection (b) of this Code section.

(h) Each county and municipal corporation of this state is authorized to convey or lease property of such county or municipal corporation to a community service board for its public purposes. Any property conveyed or leased to a community services board by a county or municipal corporation shall be operated by such community service board in accordance with this chapter and the terms of the community service board's agreements with the county or municipal corporation providing such conveyance or lease.

(i) Each community service board shall keep books of account reflecting all funds received, expended, and administered by the community service board which shall be independently audited annually.

(j) A community service board may create, form, or become a member of a nonprofit corporation, limited liability company, or other nonprofit entity, the voting membership of which shall be limited to community service boards, governmental entities, nonprofit corporations, or a combination thereof, if such entity is created for purposes that are within the powers of the community service board, for the cooperative functioning of its members, or a combination thereof; provided, however, that no funds provided pursuant to a contract between the department and the community service board may be used in the formation or operation of the nonprofit corporation, limited liability company, or other nonprofit entity. No community service board, whether or not it exercises the power authorized by this subsection,

shall be relieved of compliance with Chapter 14 of Title 50, relating to open and public meetings, and Article 4 of Chapter 18 of Title 50, relating to inspection of public records, unless otherwise provided by law.

(k) No community service board shall employ or retain in employment, either directly or indirectly through contract, any person who is receiving a retirement benefit from the Employees' Retirement System of Georgia except in accordance with the provisions of subsection (c) of Code Section 47-2-110; provided, however, that any such person who is employed as of July 1, 2004, may continue to be employed.

(l) A community service board may join or form and operate, either directly or indirectly, one or more networks of community service boards, disability or health service professionals, and other providers of disability services or health services to arrange for the provision of disability services or health services through such networks; to contract either directly or through such networks with the Department of Community Health to provide services to Medicaid beneficiaries; to provide disability services or health services in an efficient and cost-effective manner on a prepaid, capitation, or other reimbursement basis; and to undertake other disability or health services related managed care activities. For purposes of this subsection only and notwithstanding Code Section 33-3-3 or any other provision of law, a community service board shall be permitted to and shall comply with the requirements of Chapter 20A of Title 33 to the extent that such requirements apply to the activities undertaken by the community service board or by a community service board under this subsection or subsection (j) of this Code section. No community service board, whether or not it exercises the powers authorized by this subsection, shall be relieved of compliance with Article 4 of Chapter 18 of Title 50, relating to inspection of public records, unless otherwise provided by law. Any licensed health care provider shall be eligible to apply to become a participating provider under such a plan or network that provides coverage for health care, disability services, or health services which are within the lawful scope of the provider's license, but nothing in this Code section shall be construed to require any such plan or network to provide coverage for any specific health care, disability service, or health service. (Code 1981, § 37-2-6.1, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 5; Ga. L. 2002, p. 1324, §§ 1-7, 2-4, 2-5; Ga. L. 2004, p. 150, § 1; Ga. L. 2006, p. 310, § 6/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2011, p. 705, § 5-23/HB 214; Ga. L. 2012, p. 446, § 2-58/HB 642.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that" for "provided, however," in paragraphs (b)(7) and (b)(11).

The 2011 amendment, effective July 1, 2011, inserted "Department of Public Health," in paragraphs (b)(9) and (b)(15); and deleted "through the Department of Community Health" following "health services" in paragraph (b)(15).

The 2012 amendment, effective July 1, 2012, deleted "the State Personnel Administration," preceding "the state auditor" in paragraph (b)(4); in paragraph (b)(7), deleted "relating to state personnel administration," preceding "for so long as" and substituted "board remains subject to the rules and regulations of the State Personnel Board" for "board who is a covered employee as defined in Code Section 45-20-2 and is subject to the rules and regulations of the State Personnel Administration remains in a covered position"; deleted former paragraph (b)(14), which read: "Each community service board may contract with the State Personnel Administration regarding its personnel who remain in the classified service;"; redesignated former paragraphs (b)(15) through (b)(18) as present paragraphs (b)(14) through (b)(17), respectively; and substituted "paragraph (15)" for "paragraph (16)" in the second sentence of subsection (g).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which enacts this Code section, provides, in § 19.1, not codified by the General Assembly, that this Code section is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed this Code section.

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that those provisions of that Act which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective April 21, 2006.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Board employee not department employee. — Legislature did not intend for community service boards to be part of the Department of Human Resources (DHR) (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) or its employees to be department employees under ordinary circumstances; thus, a suit claiming that DHR was liable for the alleged negligence of a board employee should have been dismissed. Dep't of Human Res. v. Crews, 278 Ga. App. 56, 628 S.E.2d 191 (2006).

Community service boards constitute state agencies. — Summary judgment for community service board on a former executive director's breach of employment contract claim was reversed because the trial court erred in determining that the director was an official instead of an employee under the State of Georgia Merit Protection System; under O.C.G.A. §§ 37-2-6.1(b)(7) and 37-2-6.2, the board was a state agency when the board terminated the director, and the director was a classified employee in a covered position under the State Merit Protection System, O.C.G.A. § 45-20-2(2) and (6). Ashe v. Clayton County Community Serv. Bd., 2003 Ga. App. LEXIS 1003 (Aug. 13, 2003) (Unpublished).

Fiscal autonomy. — Because O.C.G.A. § 37-2-11.1 stated community service boards (CSB) were not agencies of the state or any specific county and that the boards had the same immunity as counties and counties were not arms of the state and did not have Eleventh Amendment immunity, the defendant, a CSB former employer, was not entitled to Eleventh Amendment immunity on a plaintiff former employee's discrimination claim; it was noted that CSB were fiscally autonomous and solely liable for any losses due to suit under O.C.G.A. §§ 37-2-6(a), 37-2-6.1(b)(16), and 37-2-6.3(c) specifically made CSB solely liable in litigation; thus, there was no question that CSB were fiscally autonomous. Peery v. Serenity Behavioral Health Sys., No. CV106-172, 2009 U.S. Dist. LEXIS 37819 (S.D. Ga. May 4, 2009).

Cited in Johnson v. Ogeechee Behavioral Health Servs., 479 F. Supp. 2d 1357 (S.D. Ga. 2007).

37-2-6.2. Employees whose jobs include duties or functions which became duties or functions of a community service board on July 1, 1994; rights, duties, and benefits of employees.

(a)(1) Those employees whose job descriptions, duties, or functions as of June 30, 1994, included the performance of employment duties or functions which will become employment duties or functions of the personnel of a community service board on July 1, 1994, shall become employees of the applicable community service boards on and after July 1, 1994. Such employees shall be subject to the employment practices and policies of the applicable community service board on and after July 1, 1994. Employees who are subject to the rules of the State Personnel Board and who are transferred to a community service board shall retain all existing rights under such rules. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 1994, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred

employees on June 30, 1994, without any interruption in membership service and without the loss of any creditable service. For purposes of coverage under the Employees' Retirement System of Georgia, such employees transferred to the community service boards on July 1, 1994, shall be deemed to be state employees. Accrued annual and sick leave possessed by said employees on June 30, 1994, shall be retained by said employees as employees of the community service board. Any person who is granted employment rights and benefits as a member of a community service board pursuant to this subsection and who later becomes employed, without any break in service, by the department, Department of Human Services, or Department of Public Health, a hospital thereof, another community service board, a county board of health for which such person provides services pursuant to this title, or a regional board shall retain, in that later employment position, all such rights and benefits. Such rights and benefits shall also be retained by any person who is employed on June 30, 1994, by the former Division of Mental Health, Developmental Disabilities, and Addictive Diseases (now known as the Department of Behavioral Health and Developmental Disabilities) of the former Department of Human Resources, a hospital thereof, a county board of health for which such person provides services pursuant to this title, or a regional board and who later becomes employed, without any break in service, by a community service board.

(2) Classified employees of a community service board under this chapter shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Board.

(3) All rights, credits, and funds in the Employees' Retirement System of Georgia which are possessed by personnel transferred by provisions of this Code section to the community service boards are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the community service boards.

(b) As to those persons employed by the former Division of Mental Health, Developmental Disabilities, and Addictive Diseases (now known as the Department of Behavioral Health and Developmental Disabilities) of the former Department of Human Resources, a hospital thereof, or a regional board on June 30, 1994, any termination from state employment after that date of any such person who is a member of the classified service shall not result from the anticipated or actual employment or utilization by:

(1) The department;

(2) A regional board;

(3) A community service board;

(4) A hospital;

(5) The Department of Human Services;

(6) The Department of Public Health; or

(7) Any private provider of disability services or health services of any person who is not an employee of the state or a political subdivision thereof to perform the duties and functions of such terminated state personnel unless such termination and utilization is the result of a reduction in appropriations for such duties or functions or is the result of a reduction in force caused by any other state department or agency which has ceased to contract with the department, the Department of Human Services, or the Department of Public Health for the services which had been provided by the terminated state personnel. (Code 1981, § 37-2-6.2, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 6; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 446, § 2-59/HB 642.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the next-to-last sentence in paragraph (a)(1), and in paragraphs (b)(6) and (b)(7).

The 2012 amendment, effective July 1, 2012, in paragraph (a)(1), in the third sentence, substituted "rules of the State Personnel Board" for "State Personnel Administration" and substituted "such rules" for "the State Personnel Administration"; and substituted "State Personnel Board" for "State Personnel Administration" in paragraph (a)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "boards" was substituted for "boards," at the first instance of that term in paragraph (a)(3).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which enacts this Code section, provides, in § 19.1, not codified by the General Assembly, that this Code section is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed this Code section.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Director of a community service board is covered under the State of Georgia Merit Protection System. — Summary judgment for community service board on a former executive director's breach of employment contract claim was reversed because the trial court erred in determining that the director was an official instead of an employee under the State of Georgia Merit Protection System; under O.C.G.A. §§ 37-2-6.1(b)(7) and 37-2-6.2, the board was a state agency when the board terminated the director, and the director was a classified employee in a covered position under the State Merit Protection System, O.C.G.A. § 45-20-2(2) and (6). Ashe v. Clayton County Community Serv. Bd., 2003 Ga. App. LEXIS 1003 (Aug. 13, 2003) (Unpublished).

37-2-6.3. Public body; debts, obligations, and liabilities.

(a) A community service board is a public body as provided in paragraph (1) of subsection (c) of Code Section 37-2-11.1.

(b) A community service board has the power to bring an action in its own name and, to the extent otherwise authorized by law and to the extent not immune from suit, may be sued in its own name. The state and the counties in which the community service board operates shall not be considered a party to or liable under any such litigation.

(c) Debts, obligations, and liabilities of a community service board are not debts, obligations, or liabilities of the state or of the counties in which such board operates. A community service board is prohibited from entering into debts, obligations, or liabilities which are also debts, obligations, or liabilities of the state or of any county. (Code 1981, § 37-2-6.3, enacted by Ga. L. 2002, p. 1324, § 2-6; Ga. L. 2009, p. 8, § 37/SB 46; Ga. L. 2009, p. 453, § 3-1/HB 228.)

JUDICIAL DECISIONS

Fiscal autonomy. — Because O.C.G.A. § 37-2-11.1 stated community service boards (CSB) were not agencies of the state or any specific county and that the boards had the same immunity as counties and counties were not arms of the state and did not have Eleventh Amendment immunity, the defendant, a CSB former employer, was not entitled to Eleventh Amendment immunity on a plaintiff former employee's discrimination claim; it was noted that CSB were fiscally autonomous and solely liable for any losses due to suit under O.C.G.A. §§ 37-2-6(a) and 37-2-6.1(b)(16), and O.C.G.A. § 37-2-6.3(c) specifically made CSB solely liable in litigation; thus, there was no question that CSB were fiscally autonomous. Peery v. Serenity Behavioral Health Sys., No. CV106-172, 2009 U.S. Dist. LEXIS 37819 (S.D. Ga. May 4, 2009).

Cited in Johnson v. Ogeechee Behav-

ioral Health Servs., 479 F. Supp. 2d 1357 (S.D. Ga. 2007).

37-2-6.4. Reconstituting or converting of organizational structure; formation of new community service board.

(a) Notwithstanding any other provisions of this chapter, a community service board may reconstitute or convert its organizational structure in the following ways:

(1) With the approval of the governing board of the community service board and the approval of the county governing authorities of the counties served by the community service board, the community service board may convert to a private nonprofit corporation. So long as the reconstituted organization continues to serve a public purpose as defined by the department, the Department of Human Services, or the Department of Public Health, as appropriate, such organization shall be authorized to retain the use of assets, equipment, and resources purchased with state and federal funds by the former community service board. In the event the new private nonprofit fails to serve such public purpose, those assets, equipment, and resources purchased by the former community service board with state and federal funds shall be returned to the department, the Department of Human Services, or the Department of Public Health, as appropriate, or to an agency designated by such department. For a period of three years following the community service board's conversion to a private nonprofit corporation, the private nonprofit corporation shall ensure that consumers of disability services or health services, as appropriate, and family members of such consumers constitute a majority of the appointed board members and that the various disability groups and health services groups are equitably represented on the board of the nonprofit corporation;

(2) With the approval of the governing board of the community service board and the approval of all of the county governing authorities of the counties served by the community service board, the community service board may convert to a unit of county government. All assets, equipment, and resources of the community service board shall be transferred to the new unit of county government; or

(3) With the approval of the governing board of the community service board and the approval of all of the county governing authorities of the counties served by the community service board, the community service board may become a component part of a hospital authority in those counties served by the community service board. So long as the hospital authority continues to serve a public purpose as defined by the department, the Department of Human

Services, or the Department of Public Health, as appropriate, the hospital authority shall be authorized to retain possession of those assets, equipment, and resources purchased by the community service board with state and federal funds. In the event the hospital authority fails to serve such public purpose, those assets, equipment, and resources purchased by the community service board with state and federal funds shall be returned to the department, the Department of Human Services, or the Department of Public Health, as appropriate, or to an agency designated by such appropriate department or departments.

(b) In the event that all county governing authorities of a community service area designated pursuant to subsection (b) of Code Section 37-2-3 concur that a community service board reconstituted pursuant to subsection (a) of this Code section has failed to provide disability services or health services as required, those county governing authorities may request that the department coordinate the formation of a new community service board pursuant to Code Section 37-2-6. Upon notification of the request, the department shall assist the county governing authorities in making appointments to the new community service board and establishing bylaws pursuant to Code Section 37-2-6. The department shall make a determination about the disposition of all assets, equipment, and resources purchased with state or federal funding in the possession of the predecessor agency. To the extent that the community service board was providing disability services or health services through the Department of Human Services or the Department of Public Health, such department or departments shall provide to the Department of Behavioral Health and Developmental Disabilities all documents, data, information, and consultation necessary or helpful to the formation of the new community service board and the determination and disposition of assets, equipment, and resources of the community service board. (Code 1981, § 37-2-6.4, enacted by Ga. L. 2002, p. 1324, § 2-6; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" throughout this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Joinder of Community Service Boards. — Because O.C.G.A. § 37-2-11.1 stated community service boards (CSB) were not agencies of the state or any specific county and that the boards had the same immunity as counties and counties were not arms of the state and did not have Eleventh Amendment immunity, the defendant, a CSB former employer, was not entitled to Eleventh Amendment immunity on a plaintiff former employee's discrimination claim; it was noted that counties had significant control over the policy and decisions made by CSB in that

counties appoint board members under O.C.G.A. § 37-2-6(b) and the counties served could allow CSB to privatize or join the county government under O.C.G.A. § 37-2-6.4(a), which was especially cogent, because it meant CSB, without state approval, could take itself outside of the state's control, and under O.C.G.A. § 37-2-6.5(a), CSB had to get county approval to dissolve. Peery v. Serenity Behavioral Health Sys., No. CV106-172, 2009 U.S. Dist. LEXIS 37819 (S.D. Ga. May 4, 2009).

Cited in Johnson v. Ogeechee Behavioral Health Servs., 479 F. Supp. 2d 1357 (S.D. Ga. 2007).

37-2-6.5. Cessation of operations by community service board; notification; continuation of operations by successor board, county board of health, or outside manager.

(a) By joint action of the membership of a community service board created pursuant to Code Section 37-2-6 and the governing authority of each county within the community service board area, such community service board may cease operations; provided, however, that such community service board shall notify the commissioner at least 90 days in advance of the meeting of the community service board in which such action is to be taken. Such joint action shall indicate the date on which the community service board shall cease operations.

(b) Upon receipt of notification that a community service board intends to cease operations, the commissioner shall notify the chairperson and executive director of such community service board and the governing authority of each county within the community service board area of such board that:

(1) The department, after securing the approval of the Governor, intends to appoint a manager or management team to manage and operate the programs and services of the community service board in accordance with the provisions of paragraph (1) of subsection (c) of Code Section 37-2-10 until the department shall determine:

(A) That such community service board should continue in operation, provided one or more members appointed to such board in accordance with subsection (b) of Code Section 37-2-6 shall be removed in accordance with subparagraph (c)(3)(H) of Code Section 37-2-10, and the department, acting on behalf of the membership of the community service board, nominates a successor to a removed member and advises the county governing authority that appointed such removed member to appoint a successor;

(B) That all of the members of such community service board appointed in accordance with subsection (b) of Code Section 37-2-6 shall be removed and such community service board shall be reconstituted; and that the department shall assist the county governing authorities in making appointments to the new community service board; or

(C) In the case where the membership of such community service board is the membership of a county board of health designated in accordance with Code Section 31-3-12.1 or subsection (e) of Code Section 37-2-6, that the entire membership of the community service board should be removed and the membership of the community service board be reconstituted in accordance with subsection (b) of Code Section 37-2-6;

(2) The department, with the approval of the commissioner, intends to redesignate the boundaries of the community service board area served by such board pursuant to paragraph (1) of subsection (b) of Code Section 37-2-3 by expanding the boundaries of an adjacent community service board area served by another community service board to include the counties in the community service board area served by the community service board that intends to cease operations so that the community service board serving such adjacent area may assume responsibility for the provision of disability services within such counties;

(3) The department intends to request pursuant to Code Section 31-3-12.1 that the governing authority of a county within the community service board area of such board authorize the membership of the board of health of such county to serve as the membership of such community service board; or

(4) The department, after securing the approval of the Governor, intends to appoint a manager or management team to manage and operate the programs and services of the community service board until such time as arrangements can be made to secure one or more alternate service providers to assume responsibility for the provision of services previously provided by the community service board.

(c) If a community service board ceases operation and is succeeded by another community service board pursuant to paragraph (2), a county board of health pursuant to paragraph (3), or a manager or management team pursuant to paragraph (4) of subsection (b) of this Code section, the department shall make a determination about the disposition of all assets, equipment, and resources purchased with state or federal funding in the possession of the predecessor community service board.

(d) If a community service board ceases operation and one or more alternate service providers assume responsibility for the provision of services previously provided by the community service board pursuant to paragraph (4) of subsection (b) of this Code section, the department shall petition the superior court of the county in which the principal office of that community service board was located for appointment of a receiver of the assets of the community service board for the protection

of the board's creditors and the public. The receiver shall be authorized to marshal and sell or transfer assets of the board, and, after payment of the costs, expenses, and approved fees of the proceeding, to pay the liabilities of the community service board. The court shall then decree that the board be dissolved. Upon completion of the liquidation, any surplus remaining after paying all costs of the liquidation shall be distributed, as determined by the court, to the agencies, entities, or providers providing disability services in the community service board area formerly served by the community service board which ceased operations. At no time shall any community service board upon ceasing operations convey any of its property, except as may be otherwise authorized by a superior court in this subsection, to any private person, association, or corporation. (Code 1981, § 37-2-6.5, enacted by Ga. L. 2006, p. 310, § 7/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that" for "provided, however," in the first sentence of subsection (a).

Editor's notes. — Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that those provisions of that Act which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective April 21, 2006.

JUDICIAL DECISIONS

Approval required to dissolve. — Because O.C.G.A. § 37-2-11.1 stated community service boards (CSB) were not agencies of the state or any specific county and that the boards had the same immunity as counties and counties were not arms of the state and did not have Eleventh Amendment immunity, the defendant, a CSB former employer, was not entitled to Eleventh Amendment immunity on a plaintiff former employee's discrimination claim; it was noted that counties had significant control over the policy and decisions made by CSB in that counties appoint board members under O.C.G.A. § 37-2-6(b) and the counties served could allow CSB to privatize or join the county government under O.C.G.A. § 37-2-6.4(a), which was especially cogent, because it meant CSB, without state approval, could take itself outside of the state's control, and under O.C.G.A. § 37-2-6.5(a), the CSB had to get county approval to dissolve. Peery v. Serenity Behavioral Health Sys., No. CV106-172, 2009 U.S. Dist. LEXIS 37819 (S.D. Ga. May 4, 2009).

Cited in Johnson v. Ogeechee Behavioral Health Servs., 479 F. Supp. 2d 1357 (S.D. Ga. 2007).

37-2-7. Formulation and publication of state plan for disability services.

(a) The department shall formulate and publish in print or electronically biennially a state plan for disability services which shall take into account the disability services plans submitted by the regional offices as required by Code Section 37-2-5.2. The state disability services plan shall be comprehensive and shall include public and private institutional and community services to the disabled. In developing the state plan, the department shall request input from the regional offices and planning boards, the community service boards, hospitals, and other public and private providers. The plan shall include an overview of current services and programs and shall also present information on future program, service, educational, and training needs.

(b) The plan shall address ways of eliminating, to the extent possible, detrimental delays and interruptions in the administration of disability services when moving an individual from one element of service to another in order to ensure continuity of care and treatment for persons receiving such services.

(c) The plan shall further set forth the proposed annual budget of the department and the regions.

(d) The plan shall be submitted to the department, the Governor, the General Assembly, the council, the regional planning boards, the hospitals, the community service boards, and any other public or private provider requesting a copy of the plan.

(e) At such time as the state plan is submitted, the department shall further submit an analysis of services provided, programs instituted, progress made, and the extent of implementation of the previous biennial plan. Such analysis shall measure the effectiveness and the efficiency of the methods of delivering services which ameliorate or prevent disability and restore health. This analysis shall further address the efforts of the department in coordinating services in accordance with Code Section 37-2-9. (Code 1933, § 88-606, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1999, p. 860, § 2; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the first sentence of subsection (a).

Code Commission notes. — Ga. L. 1999, p. 860, § 2, not codified by the General Assembly, provided that subsection (b.1) becomes effective only when funds are specifically appropriated for the purposes of subsection (b.1) in an Appropriations Act making specific reference to this Act. Funds were not appropriated in the 1999, 2000, or 2001 session. The contingent enactment of subsection (b.1) has been treated as superseded by Ga. L. 2002, p. 1324, § 1-7, which rewrote this article.

Editor's notes. — Ga. L. 1993, p. 1445,

§ 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

JUDICIAL DECISIONS

Property interest of participants in supportive living program. — Rules and regulations of state and local supportive living program give participants in the program a property interest subject to due process including an evidentiary hearing prior to termination from the program. Fields v. Pittman, 571 F. Supp. 32 (N.D. Ga. 1983).

37-2-8. Unification of state and area service programs.

Reserved. Repealed by Ga. L. 1993, p. 1445, § 16, effective July 1, 1994.

Editor's notes. — This Code section was based on Code 1933, § 88-608, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1.

Ga. L. 1993, p. 1445, which repeals and reserves this Code section, provides in § 19.1, not codified by the General Assembly, that the repeal is itself repealed on June 30, 1999.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

37-2-9. Coordination of disability services with related activities of other agencies and organizations.

To the maximum extent possible, disability services provided by the department and the regional offices, hospitals, community service boards, and other public and private providers shall be coordinated with related activities of the department and judicial, correctional, educational, social, and other health service agencies and organizations, both private and public. (Code 1933, § 88-609, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

37-2-9.1. Compliance by regional planning boards and community service boards with laws as to open meetings and inspection of records; advisory boards.

(a) Each regional planning board and community service board shall comply with the provisions of Chapter 14 of Title 50, relating to open and public meetings, and Article 4 of Chapter 18 of Title 50, relating to inspection of public records, except where records or proceedings are expressly made confidential pursuant to other provisions of law.

(b) Each regional office and community service board and other public and private providers are authorized to establish one or more advisory boards for the purpose of ensuring coordination with various agencies and organizations and providing professional and other expert guidance. (Code 1981, § 37-2-9.1, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which enacts this Code section, provides, in § 19.1, not codified by the General Assembly, that this Code section is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed this Code section.

37-2-10. Commissioner's emergency powers upon failure of community service board to establish and administer programs.

(a) Notwithstanding any other provisions of the law, the commissioner with the concurrence of the Governor is authorized to establish and administer community programs on an emergency basis in the event one or more community service boards fail to assume responsibility for the establishment and implementation of an adequate range of disability services or to provide appropriate disability services as determined by the department or substantially breach their contracts with the department pursuant to this chapter.

(b) Upon notification by a community service board of an inability to provide an adequate range of disability services or to provide appropriate services, the commissioner, with concurrence of the Governor, may:

(1) Assume responsibility for the administration and operation of all of the community programs operated by or through such board and, in which case, the programs shall become department programs; the department shall acquire the assets of the community service board; and the community service board employees shall become employees of the department; or

(2) Assume responsibility for the administration and operation of one or more of the community programs operated by or through such board, in which case, such program or programs shall become a department program or programs; the department shall acquire those assets of the community service board assigned to such program or programs; and the employees of such program or programs shall become employees of the department. Any community service board programs not transferred to the department shall continue to be operated by the community service board and the employees for such programs shall remain community service board employees.

(c)(1) Notwithstanding any other provisions of the law, in extenuating circumstances, the commissioner with the concurrence of the Governor is authorized to appoint a manager or management team to manage and operate the programs and services of the community service board if the commissioner finds that the community service board:

(A) Provides notice pursuant to Code Section 37-2-6.5 that such board intends to cease operations;

(B) Intentionally, recklessly, or negligently failed to discharge its duties pursuant to a contract with the department;

(C) Misused state or federal funds;

(D) Engaged in a fraudulent act, transaction, practice, or course of business;

(E) Endangered the life, safety, or health of a consumer served by the community service board;

(F) Failed to keep fiscal records and maintain proper control over its assets;

(G) Failed to respond to a substantial deficiency in a review or audit;

(H) Otherwise substantially failed to comply with this chapter or the rules or standards of the department; or

(I) No longer has the fiscal ability to continue to provide contracted services and, without the intervention of the department, continued provision of disability services or health services to consumers in the service area is in immediate jeopardy.

(2) In order to carry out the provisions of paragraph (1) of this subsection, the commissioner shall give written notice to the community service board regarding the appointment of a manager or management team and the circumstances on which the appointment is based. The commissioner may require the community service board to pay costs incurred by the manager or management team.

(3) Subject to the determination of the commissioner, a manager or management team appointed pursuant to this subsection may:

(A) Evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of the community service board;

(B) Hire, supervise, discipline, reassign, or terminate the employment of an employee of the community service board;

(C) Reallocate the resources and manage the assets of the community service board;

(D) Require that a financial transaction, expenditure, or contract for goods and services be approved by the manager or management team;

(E) Redesign, modify, or terminate a program or service of the community service board;

(F) Direct the members of the community service board, the executive director, chief financial officer, or any other administrative or program manager to take an action;

(G) Exercise a power, duty, authority, or function of the community service board as authorized by this chapter;

(H) Recommend to the commissioner the removal of a member or the executive director of the community service board; and the provisions of any law to the contrary notwithstanding, the commissioner may remove such member or executive director from office; and

(I) Report at least monthly to the commissioner on actions taken.

(4) A manager or management team appointed pursuant to this subsection may not use or dispose of any asset or funds contributed to the community service board by the governing authority of a county or municipal corporation without the approval of such governing authority.

(5) If a manager or management team is appointed pursuant to this Code section, the department may:

(A) Upon a determination that the conditions that gave rise to the appointment of a manager or management team pursuant to this subsection have been met and that such manager or management team is no longer necessary, terminate the authority delegated to such manager or management team and restore authority to the community service board to manage and operate the services and programs of the community service board; or

(B) Operate and manage the programs of the community service board until such time as arrangements can be made to secure one or more alternate service providers to assume responsibility for the provision of services previously provided by the community service board. If this option is exercised, the department shall petition the appropriate superior court for appointment of a receiver pursuant to subsection (d) of Code Section 37-2-6.5.

(6) Nothing in this subsection shall be construed to prohibit the department from canceling a contract with a community service board. (Code 1933, § 88-610, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2006, p. 310, § 8/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised language in subparagraph (c)(5)(B).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and

community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that those provisions of that Act which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective April 21, 2006.

Ga. L. 2010, p. 878, § 37(5)/HB 1387, which amended this Code section, purported to amend subparagraph (b)(5)(B), but actually amended subparagraph (c)(5)(B).

JUDICIAL DECISIONS

Board employee not department employee. — Legislature did not intend for community service boards to be part of the Department of Human Resources (DHR) (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) or its employees to be department employees under ordinary circumstances; thus, a suit claiming that DHR was liable for the alleged negligence of a board employee should have been dismissed. Dep't of Human Res. v. Crews, 278 Ga. App. 56, 628 S.E.2d 191 (2006).

State has power to punish boards. — Because O.C.G.A. § 37-2-11.1 stated community service boards (CSB) were not agencies of the state or any specific county and that the boards had the same immunity as counties and counties were not arms of the state and did not have Eleventh Amendment immunity, the defendant, a CSB former employer, was not entitled to Eleventh Amendment immunity on a plaintiff former employee's discrimination claim; it was noted that despite significant county controls, the state retained the power to punish CSB as provided in O.C.G.A. § 37-2-10(b), but the ability to punish represented the extent of state control and the creating statute, § 37-2-11.1(c)(1), clearly stated that CSB employees were not state employees regardless of any state control. Peery v. Serenity Behavioral Health Sys., No. CV106-172, 2009 U.S. Dist. LEXIS 37819 (S.D. Ga. May 4, 2009).

Sovereign immunity. — Community service board (CSB) was not entitled to Eleventh Amendment immunity against a former employee's Americans with Disabilities Act claims because: (1) for the purpose of litigation, the Georgia General Assembly in O.C.G.A. § 37-2-11.1(c)(1) defined a CSB as being akin to a county, which was not an arm of the state entitled to immunity; and (2) when it came to debt and liability, a CSB was autonomous pursuant to O.C.G.A. § 37-2-6(a); although other factors cut in favor of CSB entitlement to Eleventh Amendment immunity, including the state's exercise of some control over a CSB pursuant to O.C.G.A. § 37-2-10(b) and a CSB partial state funding, such factors were afforded less weight by the court. Johnson v. Ogeechee Behavioral Health Servs., 479 F. Supp. 2d 1357 (S.D. Ga. 2007).

37-2-11. Allocation of available funds for services; recipients to meet minimum standards; accounting for fees generated by providers; discrimination in providing services prohibited.

(a) It is the goal of the State of Georgia that every citizen be provided an adequate level of disability care through a unified system of disability services. To this end, the department shall, to the maximum extent possible, allocate funds available for services so as to provide an adequate disability services program available to all citizens of this state. In funding and providing disability services, the department and the regional offices shall ensure that all providers, public or private, meet minimum standards of quality and competency as established by the department.

(b) Fees generated, if any, by hospitals, community service boards, and other private and public providers, providing services under contract or purview of the department, shall be reported to the department and applied wherever appropriate against the cost of providing, and increasing the quantity and quality of, disability services; provided, however, that income to a community service board derived from fees may be used to further the purposes of such community service board as found in Code Section 37-3-6.1, subject to appropriations. The department shall be responsible for developing procedures to properly account for the collection, remittance, and reporting of generated fees. The department shall work with the community service boards and other public or private providers to develop an appropriate mechanism for accounting for the funds and resources contributed to local disability services by counties and municipalities within the area. Such contributions are not required to be submitted to either the community service boards or the department; however, appropriate documentation and accounting entries shall make certain that the county or municipality is credited, and if necessary compensated, appropriately for such contribution of funds or resources.

(c) No person shall be denied disability services provided by the state as defined in this chapter based on age, gender, race, ethnic origin, or inability to pay; provided, however, unless otherwise prohibited by law or contract, providers of disability services may deny nonemergency disability services to any person who is able to pay, but who refuses to pay. The department shall develop a state-wide sliding fee scale for the provision of disability services and shall promulgate standards that define emergency disability services and refusal to pay. (Code 1933, § 88-612, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2006, p. 310, § 9/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "remittance," was substituted for "remittance" in the second sentence of subsection (b).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that those provisions of that Act which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective April 21, 2006.

JUDICIAL DECISIONS

Cited in Youngblood v. Gwinnett Rockdale Newton Community Serv. Bd., 273 Ga. 715, 545 S.E.2d 875 (2001).

37-2-11.1. Venue in actions against community service board; representation by Attorney General; immunity; use of legal counsel; authority for indemnification, defense, and insurance.

(a) Venue for the purpose of any action against a community service board shall be the county in which the principal office of the community service board is located. For purposes of this Code section, "principal office" shall be defined as the facility which houses the executive director or other such top administrator for the community service board.

(b) In any legal proceeding, a regional planning board or the regional office shall be considered a unit of the department and shall be afforded the assistance of legal counsel from the Attorney General.

(c)(1) The community service boards shall be public bodies but shall not be considered agencies of the state or any specific county or

municipality. Such community service boards are public agencies in their own right and shall have the same immunity as provided for counties. No county shall be liable for any action, error, or omission of a community service board. Notwithstanding any provisions of law to the contrary, and regardless of any provisions of law which grant employees of the community service boards benefits under programs operated by the state or which deem them to be state employees only for purposes of those benefits, employees of the community service boards shall not be employees of the state but shall be employees of the community service boards and, further, the state shall not be liable for any action, error, or omission of such employees.

(2) A community service board may employ or contract for legal counsel to assist in performing its duties and shall be authorized to appoint legal counsel to represent the community service board and its employees. The community service board may exercise any authority granted in Article 2 of Chapter 9 of Title 45, relating to the indemnification, defense, and insuring of members and employees of public bodies. (Code 1981, § 37-2-11.1, enacted by Ga. L. 1988, p. 1761, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 7; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Law reviews. — For article, "Torts," see 53 Mercer L. Rev. 441 (2001).

For note, "Youngblood v. Gwinnett Rockdale Newton Community Service Board: The Sovereign Immunity of State Agencies Under the Georgia Constitution and the Georgia Tort Claims Act," see 53 Mercer L. Rev. 967 (2002).

JUDICIAL DECISIONS

Constitutionality. — Because community service boards are agencies or departments of the state, accordingly, the legislature acted unconstitutionally when the legislature ignored Ga. Const. 1983, Art. I, Sec. II, Par. IX(e) and the express terms of the Georgia Tort Claims Act by enacting O.C.G.A. § 37-2-11.1(c)(1) so as to denominate these newly-created state agencies or departments as unclassified public en-

tities to be accorded the same immunity as counties. Youngblood v. Gwinnett Rockdale Newton Community Serv. Bd., 273 Ga. 715, 545 S.E.2d 875 (2001).

Issue as to employee's status for immunity. — When, in a personal injury action against an employee of a community service board as an individual, there was a factual issue as to the employment status, if it was decided that the employee was not a state employee but was a board employee at the time of the collision, then it was necessary to resolve whether the employee's actions arose from the use of a motor vehicle covered by an insurance policy. Horton v. Whitaker, 238 Ga. App. 312, 518 S.E.2d 712 (1999).

Entitlement to immunity. — Community service board and county mental retardation center were provided immunity pursuant to O.C.G.A. § 37-2-11.1(c)(2). Washington v. Department of Human Resources, 241 Ga. App. 319, 526 S.E.2d 354 (1999).

Employees of a county mental retardation center were not entitled to official immunity for ministerial acts performed in connection with their official duties. Washington v. Department of Human Resources, 241 Ga. App. 319, 526 S.E.2d 354 (1999).

Considering the public purpose for which the board was created, a community service board is a "state department or agency" entitled to raise the defense of sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Par. IX. Youngblood v. Gwinnett Rockdale Newton Community Serv. Bd., 273 Ga. 715, 545 S.E.2d 875 (2001).

Community service board (CSB) was not entitled to Eleventh Amendment immunity against a former employee's Americans with Disabilities Act claims because: (1) for the purpose of litigation, the Georgia General Assembly, in O.C.G.A. § 37-2-11.1(c)(1) defined a CSB as being akin to a county, which was not an arm of the state entitled to immunity; and (2) when it came to debt and liability, a CSB was autonomous pursuant to O.C.G.A. § 37-2-6(a); although other factors cut in favor of CSB entitlement to Eleventh Amendment immunity, including the state's exercise of some control over a CSB pursuant to O.C.G.A. § 37-2-10(b) and a CSB partial state funding, such factors were afforded less weight by the court. Johnson v. Ogeechee Behavioral Health Servs., 479 F. Supp. 2d 1357 (S.D. Ga. 2007).

Because O.C.G.A. § 37-2-11.1 stated community service boards (CSB) were not agencies of the state or any specific county and that the boards had the same immunity as counties and counties were not arms of the state and did not have Eleventh Amendment immunity, the defendant, a CSB former employer, was not entitled to Eleventh Amendment immunity on a plaintiff former employee's discrimination claim. Peery v. Serenity Behavioral Health Sys., No. CV106-172, 2009 U.S. Dist. LEXIS 37819 (S.D. Ga. May 4, 2009).

OPINIONS OF THE ATTORNEY GENERAL

Representation of community board by legislator attorney. — There is no per se conflict of interest for an attorney who serves in the General Assembly to represent and provide legal services to a community service board as defined in O.C.G.A. § 37-2-11.1. 1995 Op. Att'y Gen. No. U95-26.

37-2-11.2. Access by the department, Department of Human Services, Department of Public Health, Department of Community Health, or regional office to records of any program receiving public funds; confidentiality.

(a) Notwithstanding any other law to the contrary, to ensure the quality and integrity of patient and client care, any program receiving any public funds from, or subject to licensing, certification, or facility

approval by, the department, the Department of Human Services, the Department of Public Health, the Department of Community Health, or a regional office shall be required to provide the department or the appropriate regional office or both, upon request, complete access to, including but not limited to authorization to examine and reproduce, any records required to be maintained in accordance with contracts, standards, or rules and regulations of the department, the Department of Human Services, the Department of Public Health, or the Department of Community Health or pursuant to the provisions of this title.

(b) Records obtained pursuant to subsection (a) of this Code section shall not be considered public records and shall not be released by the department, the Department of Human Services, the Department of Public Health, the Department of Community Health, or any regional office unless otherwise specifically authorized by law.

(c) The community service board shall maintain a clinical record for each consumer receiving treatment or habilitation services from such board. The treatment of clinical records of consumers in receiving services for mental illness shall be governed by the provisions of Code Section 37-3-166. The treatment of clinical records of consumers receiving habilitation services for developmental disabilities shall be governed by the provisions of Code Section 37-4-125. The treatment of clinical records of consumers in treatment for addictive diseases shall be governed by the provisions of Code Section 37-7-166. (Code 1981, § 37-2-11.2, enacted by Ga. L. 1991, p. 1059, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 5-24/HB 214.)

The 2011 amendment, effective July 1, 2011, inserted "the Department of Public Health," in two places in subsection (a), and in subsection (b).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

37-2-12. Construction of chapter to avoid conflict with federal laws.

Repealed by Ga. L. 2002, p. 1324, § 1-7, effective July 1, 2002.

Editor's notes. — This Code section was based on Code 1981, § 37-2-12, enacted by Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16.

ARTICLE 2

ADMINISTRATION OF MENTAL DISABILITY SERVICES

Editor's notes. — The previous provisions of this article relating to the State Commission on Mental Health, Mental Retardation, and Substance Abuse Service Delivery formerly consisted of Code Sections 37-2-30 through 37-2-34 and was based on Code 1981, §§ 37-2-30 through 37-2-34, enacted by Ga. L. 1992, p. 1357, § 1; Ga. L. 1993, p. 1445, § 17; Ga. L. 1994, p. 437, § 8, and was repealed by Ga. L. 1993, p. 1445, § 18, effective December 1, 1994.

Ga. L. 2008, p. 133, §§ 1, 2/HB 535, effective July 1, 2008, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 37-2-30 through 37-2-44, relating to administration of mental disability services, and was based on Code 1981, §§ 37-2-30 through 37-2-44, enacted by Ga. L. 2000, p. 440, § 1; Ga. L. 2002, p. 1324, § 1-8.

Ga. L. 2008, p. 133, § 4/HB 535, provided that Parts 1 and 2 of Article 2 of this chapter became effective only if funds were specifically appropriated for purposes of each part in an Appropriations Act making specific reference to that part and became effective when funds so appropriated became available for expenditure. Funds were not appropriated at the 2008 or 2009 sessions of the General Assembly. However, Ga. L. 2010, p. 286, § 24/SB 244, effective July 1, 2010, repealed Ga. L. 2008, p. 133, § 4/HB 535.

Part 1

Office of Disability Services Ombudsman

Editor's notes. — Ga. L. 2008, p. 133, § 4(1)/HB 535, provided that this part became effective only if funds were specifically appropriated for purposes of this part in an Appropriations Act making specific reference to this part and became effective when funds so appropriated became available for expenditure. Funds were not appropriated at the 2008 or 2009 sessions of the General Assembly. However, Ga. L. 2010, p. 286, § 24/SB 244, effective July 1, 2010, repealed Ga. L. 2008, p. 133, § 4/HB 535.

37-2-30. Definitions.

As used in this article, the term:

(1) "Advance directive for health care" means a written document voluntarily executed by a patient in accordance with the requirements of Code Section 31-32-5.

(2) "Clinical record" means a written record pertaining to an individual consumer and shall include all medical records, progress notes, charts, admission and discharge data, and all other informa-

tion which is recorded by a services provider or other entities responsible for a consumer's care and treatment under this chapter and which pertains to the consumer's hospitalization, treatment, or habilitation.

(3) "Consumer" means a natural person who has been or is a recipient of disability services as defined in Code Section 37-1-1 and shall include natural persons who are seeking disability services.

(4) "Durable power of attorney for health care" means a written document voluntarily executed by an individual creating a health care agency in accordance with Chapter 36 of Title 31, as such chapter existed on and before June 30, 2007.

(5) "Estate representative" means an executor, executrix, administrator, or administratrix of the estate of a deceased consumer.

(6) "Guardian" shall have the same meaning as provided in Code Section 29-1-1.

(7) "Health care agent" means an agent under a durable power of attorney for health care or health care agent under an advance directive for health care.

(8) "Office" means the office of disability services ombudsman created pursuant to subsection (a) of Code Section 37-2-31.

(9) "Ombudsman" means the disability services ombudsman appointed as provided for in Code Section 37-2-32.

(10) "Rights" means such rights as provided by statute, rule, or regulation for a consumer of a services provider.

(11) "Services provider" means a public or private person, corporation, or business which provides disability services operated by the division, under letter of agreement with the division, or under contract with the division.

(12) "Safety" means freedom from physical harm.

(13) "Well-being" means quality of life of a consumer, including the environment of care. (Code 1981, § 37-2-30, enacted by Ga. L. 2008, p. 133, § 3/HB 535; Ga. L. 2009, p. 453, § 3-11/HB 228.)

37-2-31. Creation of office of disability services ombudsman.

(a) There is created the office of disability services ombudsman. The chief officer of such office shall be the ombudsman.

(b) The office and the ombudsman shall:

(1) Be charged with promoting the safety, well-being, and rights of consumers;

(2) Have the powers and duties set forth in this article; and

(3) Act independently of any state official, department, or agency in the performance of duties.

(c) The office and ombudsman shall be assigned to the office of the Governor for administrative purposes only. (Code 1981, § 37-2-31, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-32. Nominating committee to identify qualified candidates for ombudsman; committee membership; terms of service of ombudsman.

(a) A nominating committee appointed by the Governor shall identify at least three qualified persons to serve as ombudsman. In making the appointment of the ombudsman, the Governor shall consider, but not be limited to, the nominations furnished by the nominating committee. The ombudsman shall have knowledge and experience concerning the safety, well-being, and rights of consumers and shall have the skills to perform the duties set forth in this article.

(b) The nominating committee shall have at least five members, who are residents of this state, appointed by the Governor and selected from the following:

(1) A former consumer of the division;

(2) A current consumer of the division;

(3) A representative of the department;

(4) A representative of an advocacy organization for consumers;

(5) A representative of law enforcement;

(6) A licensed psychiatrist;

(7) A psychologist;

(8) A registered professional nurse; and

(9) A representative of the executive branch of the state government of Georgia.

(c) Three members of the committee shall constitute a quorum. The nominating committee shall elect from among the members a chairperson and a vice chairperson.

(d) The ombudsman shall serve a term of five years and until his or her successor is appointed and qualified. The ombudsman may be reappointed. No person shall serve as ombudsman while holding another public office or while being an owner or operator of a services provider or in the employ of or under contract with a services provider;

nor shall such person be a spouse, parent, or child of such an owner, operator, employee, or contractor. (Code 1981, § 37-2-32, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-33. Powers of ombudsman.

(a) The ombudsman may appoint such deputy ombudsmen and staff as may be deemed necessary to effectively fulfill the purposes of this article and establish the compensation thereof, within the limits of the funds available for the purposes of the ombudsman. The duties of the deputy ombudsmen and staff may include the duties and powers of the ombudsman if performed under the direction of the ombudsman. The deputy ombudsmen shall be removable at the discretion of the ombudsman.

(b) The ombudsman shall have the authority to contract with experts in fields including but not limited to medicine, psychology, child development, mental or emotional illness, developmental disability, addictive disease, and child welfare, as needed to support the work of the ombudsman, utilizing funds appropriated for the purposes of the ombudsman. (Code 1981, § 37-2-33, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-34. Ombudsman and other office personnel deemed members of department work force for certain purposes.

The ombudsman and persons employed by or acting as agents of the ombudsman shall be deemed members of the work force of the department solely for the purposes of:

(1) Allowing the department to disclose confidential clinical records and protected health information to the ombudsman as provided for in Code Section 37-2-36;

(2) Protecting confidential clinical records and protected health information from further disclosure through or by the ombudsman and the office of the ombudsman; and

(3) Ensuring the department's compliance with the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and the Standards for Privacy of Individually Identifiable Health Information promulgated pursuant thereto. (Code 1981, § 37-2-34, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-35. Duties of ombudsman.

The ombudsman shall:

(1) Establish priorities, policies and procedures for receiving, investigating, referring, and attempting to resolve complaints made by

or on behalf of consumers concerning any act, omission to act, practice, policy, or procedure of a services provider that may adversely affect the safety, well-being, and rights of consumers and any policies and procedures necessary to implement the provisions of this article;

(2) Investigate and make reports and recommendations to the department and other appropriate agencies concerning any act or failure to act by any services provider with respect to the safety, well-being, and rights of consumers and is authorized to:

(A) Prioritize investigations, reporting, and recommendations based on the seriousness and pervasiveness of the alleged act or failure to act; and

(B) Refer to the services provider those complaints deemed appropriate for resolution by the services provider;

(3) Establish a uniform state-wide complaint process;

(4) Collect and record data relating to complaints and findings with regard to services providers and analyze such data in order to identify adverse effects upon the safety, well-being, and rights of consumers;

(5) Promote the interests of consumers before governmental agencies and seek administrative and other remedies to protect the safety, well-being, and rights of consumers by:

(A) Analyzing, commenting on, and monitoring the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to the safety, well-being, and rights of consumers; and

(B) Recommending any changes in such laws, regulations, policies, and actions as the ombudsman determines to be appropriate;

(6) Make a biennial written report documenting the types of complaints and problems reported by consumers and others on their behalf and include recommendations concerning needed policy, regulatory, and legislative changes. The biennial report shall be submitted to the Governor, the General Assembly, the commissioner, and other appropriate agencies and organizations and made available to the public. The ombudsman shall not be required to distribute copies of the biennial report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. The report shall not identify any consumer by name or by implication without the express written consent of the consumer, or if applicable the parent of a minor consumer, the guardian of the consumer, or the

health care agent of the consumer if the agent is so authorized to make such a decision and the consumer is unable to do so; and

(7) Serve as a member of the medical review group established pursuant to Code Section 37-2-45. (Code 1981, § 37-2-35, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "biennial" was substituted for "annual" in the third sentence of paragraph (6).

37-2-36. Investigations.

(a) The ombudsman on his or her initiative or in response to complaints made by or on behalf of consumers may conduct investigations in matters within his or her powers and duties as provided by this article.

(b) The ombudsman shall have the authority to enter any facility, premises, or property where disability services are provided. Upon entering such facility, premises, or property, the ombudsman shall notify the administrator or, in the absence of the administrator, the person in charge of such facility, premises, or property before speaking to any consumer. After notifying the administrator or the person in charge of such facility, premises, or property, the ombudsman may communicate privately and confidentially with consumers in such facility, premises, or property individually or in groups.

(c) The ombudsman shall have the authority to inspect the entire facility, premises, or property and have access to the administrative records, policies, and documents of the facility, premises, or property. Entry and investigation as provided by this Code section shall be conducted in a manner which will not significantly disrupt the provision of disability services to consumers.

(d) The ombudsman shall have access to the clinical records of any consumer if:

(1) The ombudsman has written consent of the consumer, or if applicable the parent of a minor consumer, the guardian of the consumer, or the health care agent of the consumer if the agent is authorized to make such a decision and the consumer is unable to do so; or

(2) The consumer lacks the capacity to consent to the review and has no guardian of the consumer or health care agent who is authorized to make such a decision.

(e) The ombudsman shall identify himself or herself as such to the consumer, and the consumer shall have the right to communicate or refuse to communicate with the ombudsman.

(f) The consumer, the parent of a minor consumer, the consumer's guardian, or the health care agent of the consumer if the health care agent is authorized to make such a decision and the consumer is unable to do so, shall have the right to participate in planning any course of action to be taken on the consumer's behalf by the ombudsman, and the consumer, parent of a minor consumer, guardian, or health care agent of the consumer if the agent is so authorized, shall have the right to approve or disapprove any proposed action to be taken on the consumer's behalf by the ombudsman.

(g) The ombudsman shall have the authority to obtain from any department, governmental agency, or services provider, and such department, agency, or services provider shall provide cooperation and assistance, services, data, and access to, such files and records as will enable the ombudsman properly to perform his or her duties and exercise his or her powers, provided that such information is not privileged under any law.

(h) The ombudsman shall report for investigative purposes any and all:

(1) Suspected criminal activity to the appropriate law enforcement agency;

(2) Suspected abuse, neglect, exploitation, or abandonment of a consumer by any person to the appropriate federal or state regulatory authority; and

(3) Suspected violations of any professional code of conduct to the appropriate licensing board.

(i) The ombudsman shall provide information and procedural guidance to any person who requests assistance in making a report of suspected abuse, neglect, exploitation, or abandonment of a consumer by any person:

(1) To the appropriate law enforcement agency if criminal activity is suspected; or

(2) To the appropriate federal or state regulatory authority if abuse, neglect, exploitation, or abandonment of a consumer is suspected. (Code 1981, § 37-2-36, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-37. Investigation report; referrals to division and other appropriate agencies.

(a) Following an investigation, the ombudsman shall report his or her opinions or recommendations to the following, as applicable: the consumer, parent of a minor consumer, guardian of the consumer,

health care agent of the consumer, estate representative, services provider, and the division and shall attempt to resolve the complaint using, whenever possible, informal techniques of mediation and conciliation. With respect to a complaint against the services provider, the ombudsman shall first notify the administrator or person in charge of that services provider in writing and give such person a reasonable opportunity to correct any alleged defect. If so notified and the administrator or person in charge fails to take corrective action after a reasonable amount of time or if the defect seriously threatens the safety or well-being of any consumer, the ombudsman may refer the complaint to the division and any other appropriate agency.

(b) Complaints or conditions adversely affecting consumers which cannot be resolved in the manner described in subsection (a) of this Code section shall, whenever possible, be referred by the ombudsman to the division and any other appropriate agency. (Code 1981, § 37-2-37, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-38. Confidentiality; disclosure of information.

(a) The identity of any complainant or individual providing information on behalf of the consumer or complainant relevant to the investigation of a complaint shall be confidential and shall not be disclosed without the express written permission of such person, unless such disclosure is necessary for the department or services provider to protect the safety, well-being, or rights of a consumer; provided, however, that if the complaint becomes the subject of a judicial or administrative proceeding, the identity of such persons may be disclosed for the purpose of the proceeding.

(b) The identity of any and all consumers involved in or mentioned in an investigation, whether as a complainant or otherwise, shall be confidential and shall not be disclosed without the express written consent of the consumer or a person legally authorized to consent for the consumer. (Code 1981, § 37-2-38, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-39. Notice of complaint procedure.

The ombudsman shall prepare and distribute to each services provider in the state a written notice describing the procedure to follow in making a complaint, including the address and telephone number of the office and the ombudsman. The administrator or person in charge of such services provider shall give the written notice required by this Code section to each consumer who receives disability services from such services provider and the consumer's guardian, parent of a minor consumer, or health care agent, if any, upon first providing such

disability services. The administrator or person in charge of such services provider shall also post such written notice in conspicuous public places in the facility, premises, or property in which disability services are provided in accordance with procedures provided by the ombudsman and shall give such notice to any consumer and his or her guardian, parent of a minor consumer, or health care agent, if any, who did not receive it upon the consumer's first receiving disability services. (Code 1981, § 37-2-39, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-40. Discrimination or retaliation prohibited; sanctions.

(a) No person shall discriminate or retaliate in any manner against any consumer, relative of a consumer, guardian or health care agent of a consumer, any employee of a services provider, or any other person for making a complaint or providing information in good faith to the ombudsman.

(b) Any person violating this Code section shall be guilty of a misdemeanor. (Code 1981, § 37-2-40, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-41. Federal financial participation; documentation.

The ombudsman and commissioner shall obtain federal financial participation for eligible activity by the ombudsman. The ombudsman shall maintain and transmit to the department documentation that is necessary in order to obtain federal funds which shall be applied to the budget of the ombudsman. (Code 1981, § 37-2-41, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-42. Immunity from civil and criminal liability for providing certain information to ombudsman.

No person providing information, including but not limited to a consumer's records, to the ombudsman shall be held, by reason of having provided such information, to have violated any criminal law or to be civilly liable under any law unless such information is false and the person providing such information knew or had reason to believe that it was false. (Code 1981, § 37-2-42, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-43. Immunity from civil and criminal liability for filing complaint; ombudsman's immunity for actions related to discharge of duties.

(a) Any person who makes a complaint or provides information relating to a complaint as authorized in this article shall incur no civil

or criminal liability therefor unless such complaint or information is false and the person making such complaint or providing such information knew or had reason to believe that it was false.

(b) The ombudsman and employees of the office of ombudsman shall be held harmless, including legal fees and costs, if any, in any claim, demand, or suit for damages resulting from acts or omissions committed in the discharge of his or her duties for any action taken under this article if the action was taken in good faith, was within the scope of the ombudsman's authority, and did not constitute willful or reckless misconduct. (Code 1981, § 37-2-43, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-44. Statutory construction.

Nothing in this article shall be construed to limit the power of the department to investigate complaints where otherwise authorized by law. (Code 1981, § 37-2-44, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-45. Medical review group to review the deaths of consumers.

(a) The Governor shall appoint a medical review group to conduct medical reviews of all deaths of consumers in state hospitals or state operated community residential services, which shall serve at the pleasure of the Governor. The medical review group shall consist of the ombudsman and four board certified physicians, one of whom shall be a psychiatrist. Three members of the medical review group shall constitute a quorum. The ombudsman shall serve as the chairperson and shall appoint a vice chairperson.

(b) The physician members of the medical review group shall receive such compensation, if any, as may be fixed by the Governor. Such physician members shall be reimbursed for expenses incurred by them in performance of their duties such as transportation, lodging, and subsistence, at the same rate as members of the General Assembly.

(c) The medical review group:

(1) Shall be a review organization and shall conduct reviews of deaths of consumers in state hospitals and state operated community residential services as peer reviews pursuant to Article 6 of Chapter 7 of Title 31;

(2) Shall review, within 60 days of notice of the death, all deaths of consumers:

(A) Occurring on site of a state hospital or state operated community residential services providing services under this title;

(B) In the company of staff of a state hospital or state operated community residential services providing services under this title; or

(C) Occurring within two weeks following the consumer's discharge from a state hospital or state operated community residential services;

(3) Shall have access to all clinical records of the consumer, all investigations conducted by the department, state hospitals, or state operated community residential services regarding the death, and all reviews of the death, including peer reviews;

(4) May interview staff of the state hospitals and state operated community residential services, and other persons involved in the events immediately preceding and involving the death;

(5) Shall determine whether the death was the result of natural causes or may have resulted from other than natural causes;

(6) Shall determine whether the death requires further investigation or review;

(7) May make confidential recommendations to the ombudsman, the department, the division, the state hospitals, and state operated community residential services regarding consumer treatment and care, policies, and procedures, which may assist in the prevention of deaths; and

(8) Shall report to the appropriate law enforcement agency any suspected criminal activity or suspected abuse and shall report any suspected violation of any professional code of conduct to the appropriate licensing board.

(d) All peer review records submitted to or produced or created by the medical review group and the findings and recommendations of the medical review group, except for the quarterly reports, shall remain confidential and shall not be considered public records under Article 4 of Chapter 18 of Title 50. (Code 1981, § 37-2-45, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-46. Notification of consumer's death; time limits.

(a) Within 24 hours after a consumer suffers death, the division, governmental agency, or services provider shall notify the ombudsman of such death; provided, however, that for a death occurring within two weeks following the consumer's discharge from a state hospital or state operated community residential services, the division, governmental agency, or services provider shall notify the ombudsman of such death within 24 hours of knowledge of such death.

(b) The medical reviews of deaths in state hospitals and state operated community residential services as provided for in Code Section 37-2-45 shall not be limited by the type of disability services received or applied for by the consumer at any time after the effective date of this part and such reviews shall be of the death of all consumers, the provisions of Code Section 37-2-47 notwithstanding. (Code 1981, § 37-2-46, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

37-2-47. Scope of part.

Commencing with the calendar month immediately following the month in which this part becomes effective, for the purposes of this article, the office and the ombudsman shall receive, investigate, refer, and attempt to resolve complaints made by or on behalf of only those consumers with mental or emotional illness, consumers with mental or emotional illness and co-occurring developmental disability, and consumers with mental or emotional illness and co-occurring addictive disease. (Code 1981, § 37-2-47, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

Part 2

Additional Powers and Duties

Editor's notes. — Ga. L. 2008, p. 133, § 4(2)/HB 535, provided that this part became effective only if funds were specifically appropriated for purposes of this part in an Appropriations Act making specific reference to this part and became effective when funds so appropriated became available for expenditure. Funds were not appropriated at the 2008 or 2009 sessions of the General Assembly. However, Ga. L. 2010, p. 286, § 24/SB 244, effective July 1, 2010, repealed Ga. L. 2008, p. 133, § 4/HB 535.

37-2-50. Additional powers and duties.

Commencing with the calendar month immediately following the month in which this part becomes effective, for the purposes of this article, the office and ombudsman shall, in addition to those powers and duties provided by Code Section 37-2-47, receive, investigate, refer, and attempt to resolve complaints made by or on behalf of all consumers with developmental disability or addictive disease. (Code 1981, § 37-2-50, enacted by Ga. L. 2008, p. 133, § 3/HB 535.)

CHAPTER 3

EXAMINATION, TREATMENT, ETC., FOR MENTAL ILLNESS

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General Provisions

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37-3-1. Definitions.

37-3-2. Authority of board to issue regulations; powers of department generally.

37-3-3. Validity of hospitalization orders entered before September 1, 1978; establishment of regulations as to orders authorizing continued hospitalization of patients hospitalized before September 1, 1978.

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Sec.

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Examination, Hospitalization, and Treatment of Involuntary Patients

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Emergency Receiving Facilities for Examination of Persons Apprehended Pursuant to Physician's Certificate, Court Order, etc.

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upon patient's admission to emergency receiving facility.

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37-3-80. Designation of treatment facilities.
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37-3-82. Procedure upon failure of or noncompliance with involuntary outpatient treatment plan.
37-3-83. Procedure for continued involuntary hospitalization.
37-3-84. Appointment of hearing examiners for hearings as to continued hospitalization; powers of hearing examiners generally; issuance of subpoenas.
37-3-85. Periodic review of individualized service plan; procedure upon end of need for involuntary treatment; designation of discharge decision maker; notice of discharge or transfer to voluntary status.

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37-3-90. Physician's or psychologist's determination and certification as to necessity of involuntary care; treatment of patient as inpatient or outpatient; minors.
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37-3-93. Court order for outpatient treatment; physician's or psychologist's petition to extend order; review of petition; hearing on extension petition; patients under juvenile court jurisdiction.
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Placement, Transfer, and Transportation of Patients Generally

37-3-100. Placement and transfer of patients generally.
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hospitals and institutions located in Georgia.
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Article 5

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37-3-120. Effect of inability to pay on right to care and treatment.
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Rights and Privileges of Patients, Their Representatives, etc., Generally

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37-3-140. Retention of rights and privileges by patients generally; right to due process.
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37-3-148. Right of patients or representatives to petition for writ of habeas corpus and for judicial protection of rights and privileges granted by this chapter.
37-3-149. Establishment of procedures for receiving patients' and staff complaints; making of final decisions; establishment of rules and regulations implementing procedures; complaint procedures as alternative to legal remedies.
37-3-150. Right to appeal orders of probate court, juvenile court, or hearing examiner; payment of costs of appeal; right to subsequent appeal; right to legal counsel on appeal.

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37-3-160. Individual dignity of patients to be respected; treatment of the mentally ill as medical patients; use of criminal facilities and procedures.
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37-3-162. Patients' care and treatment rights.
37-3-163. Recognition of patient's physical integrity; rights to refuse medication; obtaining consent to treatment and surgery; emergency surgery; immunity of hospital or physician; direction of notice of actions taken under Code section.
37-3-164. "Representative," "substantial change" defined; consultation by patient's representative with treatment facility; notification of treatment change; guardian's consultation and notification rights.
37-3-165. Mistreatment, neglect, or

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abuse of patients prohibited; use of medication, physical restraints, or seclusion restricted; standards for use of physical restraint.
37-3-166. (Effective until January 1, 2013. See note.) Treatment of clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge.
37-3-166. (Effective January 1, 2013. See note.) Treatment of clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge.
37-3-167. Right of patient to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.
37-3-168. Right of patient's attorney to interview physicians, psychologists, and staff attending patient; establishment of regulations as to release of information to patient's attorney.

Cross references. — Mental incompetency and dependency for juveniles, T. 15, C. 11, A. 4. Plea in criminal case that defendant was insane or mentally incompetent at time act committed or is mentally incompetent to stand trial, § 17-7-130 et seq. Protective services for abused, neglected, or exploited disabled adults, T. 30, C. 5. Reporting of abuse or exploitation of residents of long-term care facilities, § 31-8-80 et seq. Rights of persons residing in long-term care facilities generally, § 31-8-100 et seq. Licensing of applied psychologists, T. 43, C. 39.

Administrative rules and regulations. — Rules and regulations on "Mental Health and Mental Retardation and Substance Abuse," Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Chapters 290-4-1 and 290-4-3 et seq.

Adult crisis stabilization units, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Behavioral Health and Developmental Disabilities, Chapter 82-3-1.

Children and adolescent crisis stabilization units, Official Compilation of the Rules and Regulations of the State or Georgia, Department of Behavioral Health and Disabilities, Chapter 82-4-1.

Law reviews. — For article, "Signing into Heaven: Zinermon v. Burch, Federal Rights, and State Remedies Thirty Years After Monroe v. Pape," see 40 Emory L.J. 1 (1991).

For note on commitment and release of persons found not guilty by reason of insanity, see 15 Ga. L. Rev. 1065 (1981).

JUDICIAL DECISIONS

Retention of jurisdiction by court when defendant committed after plea of insanity. — When the defendant enters a plea of not guilty by reason of insanity, which is accepted, and the court commits the defendant to a hospital for treatment, the committing court retains jurisdiction of the acquitted-committed defendant. Moses v. State, 167 Ga. App. 556, 307 S.E.2d 35 (1983), overruled on other grounds, Nagel v. State, 262 Ga. 888, 427 S.E.2d 490 (1993).

Commitment of pretrial detainee. — Superior court has authority to civilly commit a pretrial detainee who is incompetent to stand trial, as long as the court utilizes the criteria and procedures set forth in Chapter 3 of Title 37 in making the court's decision. Department of Human Resources v. Long, 217 Ga. App. 763, 458 S.E.2d 914 (1995).

Cited in Whitfield v. State, 158 Ga. App. 660, 281 S.E.2d 643 (1981); Clayton v. State, 160 Ga. App. 908, 288 S.E.2d 621

(1982); Benham v. Ledbetter, 609 F. Supp. 125 (N.D. Ga. 1985), aff'd, 785 F.2d 1480 (1986).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Wrongful Confinement to a Mental Health or Developmental Disabilities, 44 POF3d 217.

Am. Jur. Trials. — Incompetency and Commitment Proceedings, 8 Am. Jur. Trials 483.

Representing the Mentally Ill: Civil Commitment Proceedings, 26 Am. Jur. Trials 97.

ALR. — Physical or mental illness as basis of dismissal of student from school, college, or university, 17 ALR4th 519.

Appealability of state criminal court order requiring witness other than accused to undergo psychiatric examination, 17 ALR4th 867.

Liability of doctor, psychiatrist, or psychologist for failure to take steps to prevent patient's suicide, 17 ALR4th 1128.

Power of court, in absence of statute, to order psychiatric examination of accused for purpose of determining mental condition at time of alleged offense, 17 ALR4th 1274.

Hospital's liability for mentally deranged patient's self-inflicted injuries, 36 ALR4th 117.

ARTICLE 1

GENERAL PROVISIONS

37-3-1. Definitions.

As used in this chapter, the term:

(.1) "Available outpatient treatment" means outpatient treatment, either public or private, available in the patient's community, including but not limited to supervision and support of the patient by family, friends, or other responsible persons in that community. Outpatient treatment at state expense shall be available only within the limits of state funds specifically appropriated therefor.

(1) "Chief medical officer" means the physician with overall responsibility for patient treatment at any facility receiving patients under this chapter or a physician appointed in writing as the designee of such chief medical officer.

(2) "Clinical record" means a written record pertaining to an individual patient and shall include all medical records, progress notes, charts, admission and discharge data, and all other information which is recorded by a facility or other entities responsible for a patient's care and treatment under this chapter and which pertains to the patient's hospitalization and treatment. Such other information as may be required by rules and regulations of the board shall also be included.

(3) "Community mental health center" means an organized program for the care and treatment of the mentally ill operated by a community service board or other appropriate public provider.

(4) "Court" means:

(A) In the case of an individual who is 17 years of age or older, the probate court of the county of residence of the patient or the county in which such patient is found. Notwithstanding Code Section 15-9-13, in any case in which the judge of such court is unable to hear a case brought under this chapter within the time required for such hearing or is unavailable to issue the order specified in subsection (b) of Code Section 37-3-41, such judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and shall be otherwise qualified for his duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such standing appointment shall serve at the pleasure of the judge making the appointment or his successor in office to hear such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed with the approval of the governing authority of the county for which such person is appointed and shall be paid from the county funds of said county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served; or

(B) In the case of an individual who is under the age of 17 years, the juvenile court of the county of residence of the patient or the county in which such patient is found.

(5) "Emergency receiving facility" means a facility designated by the department to receive patients under emergency conditions as provided in Part 1 of Article 3 of this chapter.

(6) "Evaluating facility" means a facility designated by the department to receive patients for psychiatric evaluation as provided in Part 2 of Article 3 of this chapter.

(7) "Facility" means any state owned or state operated hospital, community mental health center, or other facility utilized for the diagnosis, care, treatment, or hospitalization of persons who are mentally ill; any facility operated or utilized for such purpose by the United States Department of Veterans Affairs or other federal agency; and any other hospital or facility within the State of Georgia approved for such purpose by the department.

(8) "Full and fair hearing" or "hearing" means a proceeding before a hearing examiner under Code Section 37-3-83 or Code Section 37-3-93 or before a court as defined in paragraph (4) of this Code section. The hearing may be held in a regular courtroom or in an

informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The patient shall be provided with effective assistance of counsel. If the patient cannot afford counsel, the court shall appoint counsel for him or the hearing examiner shall have the court appoint such counsel; provided, however, that the patient shall have the right to refuse in writing the appointment of counsel, in the discretion of the hearing examiner or the court. The patient shall have the right to confront and cross-examine witnesses and to offer evidence. The patient shall have the right to subpoena witnesses and to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The patient shall have the right to obtain a continuance for any reasonable time for good cause shown. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases. The burden of proof shall be upon the party seeking treatment of the patient. The standard of proof shall be by clear and convincing evidence. At the request of the patient, the public may be excluded from the hearing. The patient may waive his right to be present at the hearing, in the discretion of the hearing examiner or the court. The reason for the action of the court or hearing examiner in excluding the public or permitting the hearing to proceed in the patient's absence shall be reflected in the record.

(9) "Individualized service plan" means a proposal developed during a patient's stay in a facility and which is specifically tailored to the individual patient's treatment needs. Each plan shall clearly include the following:

(A) A statement of treatment goals or objectives, based upon and related to a proper evaluation, which can be reasonably achieved within a designated time interval;

(B) Treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to these goals and which include a specific prognosis for achieving these goals;

(C) Identification of the types of professional personnel who will carry out the treatment and procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law;

(D) Documentation of patient involvement and, if applicable, the patient's accordance with the service plan; and

(E) A statement attesting that the chief medical officer has made a reasonable effort to meet the plan's individualized treatment

goals in the least restrictive environment possible closest to the patient's home community.

(9.1) "Inpatient" means a person who is mentally ill and:

(A)(i) Who presents a substantial risk of imminent harm to that person or others, as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to that person or other persons; or

(ii) Who is so unable to care for that person's own physical health and safety as to create an imminently life-endangering crisis; and

(B) Who is in need of involuntary inpatient treatment.

(9.2) "Inpatient treatment" or "hospitalization" means a program of treatment for mental illness within a hospital facility setting.

(9.3) "Involuntary treatment" means inpatient or outpatient treatment which a patient is required to obtain pursuant to this chapter.

(10) "Least restrictive alternative," "least restrictive environment," or "least restrictive appropriate care and treatment" means that which is the least restrictive available alternative, environment, or care and treatment, respectively, within the limits of state funds specifically appropriated therefor.

(11) Reserved.

(12) "Mentally ill person requiring involuntary treatment" means a mentally ill person who is an inpatient or an outpatient.

(12.1) "Outpatient" means a person who is mentally ill and:

(A) Who is not an inpatient but who, based on the person's treatment history or current mental status, will require outpatient treatment in order to avoid predictably and imminently becoming an inpatient;

(B) Who because of the person's current mental status, mental history, or nature of the person's mental illness is unable voluntarily to seek or comply with outpatient treatment; and

(C) Who is in need of involuntary treatment.

(12.2) "Outpatient treatment" means a program of treatment for mental illness outside a hospital facility setting which includes, without being limited to, medication and prescription monitoring, individual or group therapy, day or partial programming activities, case management services, and other services to alleviate or treat the patient's mental illness so as to maintain the patient's

semi-independent functioning and to prevent the patient's becoming an inpatient.

(13) "Patient" means any mentally ill person who seeks treatment under this chapter or any person for whom such treatment is sought.

(14) "Private facility" means any hospital facility that is a proprietary hospital or a hospital operated by a nonprofit corporation or association approved for the purposes of this chapter, as provided herein, or any hospital facility operated by a hospital authority created pursuant to the "Hospital Authorities Law," Article 4 of Chapter 7 of Title 31.

(14.1) "Psychologist" means a licensed psychologist who meets the criteria of training and experience as a health service provider psychologist as provided in Code Section 31-7-162.

(15) "Representatives" means the persons appointed as provided in Code Section 37-3-147 to receive notice of the proceedings for voluntary or involuntary treatment.

(16) "Superintendent" means the chief administrative officer who has overall management responsibility at any facility receiving patients under this chapter, other than a regional state hospital or state owned or operated community program, or an individual appointed as the designee of such superintendent.

(16.1) "Traumatic brain injury" means a traumatic insult to the brain and its related parts resulting in organic damage thereto which may cause physical, intellectual, emotional, social, or vocational changes in a person. It shall also be recognized that a person having a traumatic brain injury may have organic damage or physical or social disorders, but for the purposes of this chapter, traumatic brain injury shall not be considered mental illness.

(17) "Treatment" means care, diagnostic and therapeutic services, including the administration of drugs, and any other service for the treatment of an individual.

(18) "Treatment facility" means a facility designated by the department to receive patients for psychiatric treatment as provided in Code Sections 37-3-80 through 37-3-84. (Ga. L. 1958, p. 697, § 1; Ga. L. 1960, p. 837, § 1; Code 1933, § 88-501, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, §§ 1-3; Ga. L. 1982, p. 3, § 37; Ga. L. 1986, p. 1098, § 1; Ga. L. 1989, p. 1566, § 3; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 1059, § 8; Ga. L. 1992, p. 1902, § 1; Ga. L. 1993, p. 1445, § 17.1; Ga. L. 2002, p. 1324, §§ 1-9, 1-10; Ga. L. 2009, p. 453, § 3-12/HB 228; Ga. L. 2010, p. 286, § 8/SB 244.)

The 2010 amendment, effective July 1, 2010, deleted "as defined in paragraph (11) of this Code section" following "illness" at the end of paragraph (16.1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, the paragraph (11) designation, which was inadvertently stricken by the 2009 amendment, was added.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Law reviews. — For note, "The Parity Cure: Solving Unequal Treatment of Mental Illness Health Insurance Through Federal Legislation," see 44 Ga. L. Rev. 511 (2010).

For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Insane and mentally ill synonymous. — Person who is insane, i.e., who is not legally responsible for the person's own actions because the person cannot distinguish between right and wrong, is mentally ill under this definition. Clark v. State, 151 Ga. App. 853, 261 S.E.2d 764 (1979), aff'd, 245 Ga. 629, 266 S.E.2d 466 (1980).

Psychiatrist has "no control" over a voluntary outpatient. — When the patient was a voluntary outpatient, the psychiatrist had no control of the patient in the sense that the psychiatrist could claim legal authority to confine or restrain the patient against the patient's will unless the patient met the criteria for involuntary commitment set forth in O.C.G.A. § 37-3-1 and the patient had not acquiesced in the treatment plan prescribed by the psychiatrist, the psychiatrist could not have unilaterally imposed the treatment plan upon the patient except in the most extraordinary circumstances. Ermutlu v. McCorkle, 203 Ga. App. 335, 416 S.E.2d 792, cert. denied, 203 Ga. App. 906, 416 S.E.2d 792 (1992).

Facts sufficient to sustain criteria for civil commitment. — When the physician's testimony in a release hearing shows only that the defendant did not engage in aggressive, psychotic behavior and was not mentally ill during the defendant's stay at the hospital while in a structured environment, and in view of defendant's medical history, the history of the defendant's functioning in society, and the history of the case, all of which are facts which the trial court is authorized to consider, the court was authorized to find that the criteria for civil commitment had been met. Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979).

Although a defendant had not exhibited any violent tendencies or done anything to harm anyone while the defendant was in the custody of the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes), in light of

the finding of insanity that was made after the defendant entered a plea of not guilty by reason of insanity to two stalking charges, the O.C.G.A. § 24-4-21 presumption that the insanity existed thereafter, the evidence that subsequent to the criminal trial, the defendant had been diagnosed with schizophrenia, and the defendant's failure to present much in the way of evidence that the defendant was sane, the defendant's civil commitment was not improper under O.C.G.A. § 37-3-1(9.1). Bonney v. State, 295 Ga. App. 706, 673 S.E.2d 102 (2009).

Trial court did not err in denying the defendant's petition for release from inpatient involuntary treatment under O.C.G.A. § 17-7-131(f) because the defendant continued to meet the statutory inpatient involuntary treatment criteria under O.C.G.A. § 37-3-1(9.1), and the defendant failed to rebut the presumption of continuing insanity and that inpatient involuntary treatment was still required; the defendant's experts testified that the defendant had physical altercations with patients and had relapsed and experienced an auditory hallucination after the trial court denied the defendant's prior request for release, which led to an increase in medications. Newman v. State, 314 Ga. App. 99, 722 S.E.2d 911 (2012).

Distinction between eligibility for guardian and for becoming an inmate. — Person may be eligible to have a guardian and may not be eligible to become an inmate of Milledgeville (now Central) State Hospital or continue as such. Tucker v. American Sur. Co., 78 Ga. App. 327, 50 S.E.2d 859 (1948).

Acts admitted by insanity plea sufficient to sustain criteria for civil commitment. — Acts admitted by a plea of not guilty by reason of insanity establish that the defendant meets the criteria for civil commitment. Once that condition has been established, it is presumed to continue at the time of an application for release. Moses v. State, 167 Ga. App. 556, 307 S.E.2d 35 (1983), overruled on other grounds, Nagel v. State, 262 Ga. 888, 427 S.E.2d 490 (1993).

Treatment outside confines of facility. — Committing court has the authority to allow an insanity acquittee to pursue treatment, educational or other goals outside the confines of the treating facility. O'Neal v. State, 185 Ga. App. 838, 365 S.E.2d 894 (1988).

Recent expressed threat of violence. — Patient's threat to put a family member in a body bag qualified as a recent expressed threat of violence under O.C.G.A. § 37-3-1(9.1)(A)(i). Although the incident occurred several months before the patient's habeas hearing, the patient's freedom and activities had been substantially limited by the patient's return to a hospital, thus significantly curtailing the patient's ability to commit additional threats and acts of violence. Dupree v. Schwarzkophf, No. S11A0290, 2011 Ga. LEXIS 508 (June 27, 2011).

Evidence sufficient to support conclusion that mentally ill person met criteria for involuntary treatment as "inpatient." See Ruff v. Central State Hosp., 192 Ga. App. 631, 385 S.E.2d 734, cert. denied, 192 Ga. App. 903, 385 S.E.2d 734 (1989); Gross v. State, 210 Ga. App. 125, 435 S.E.2d 496 (1993).

"Traumatic brain injury" exclusion in O.C.G.A. § 37-3-1 did not preclude defendant's involuntary treatment since the defendant was adjudicated mentally ill as defined in O.C.G.A. § 17-7-131. Sikes v. State, 221 Ga. App. 595, 472 S.E.2d 101 (1996).

Patient did not meet criteria for involuntary commitment. — When the patient did not express any suicidal or homicidal tendencies, and the patient's psychiatrist did not believe the patient to present a substantial risk of imminent harm to self or others, the medical expert witnesses of record were in agreement that patient's mental status did not meet the criteria for involuntary commitment set forth in O.C.G.A. § 37-3-1. Ermutlu v. McCorkle, 203 Ga. App. 335, 416 S.E.2d 792, cert. denied, 203 Ga. App. 906, 416 S.E.2d 792 (1992).

When both the state's and the juvenile's expert witnesses testified that the juvenile did not require involuntary commitment, there was ample evidence supporting the juvenile court's determination that the juvenile did not meet the criteria for involuntary commitment; therefore, the transfer from juvenile court to Superior

Court for criminal prosecution was proper. In re A.B.S., 242 Ga. App. 277, 529 S.E.2d 415 (2000).

In finding for the government in an action brought by a wife after her husband shot her rendering her paraplegic, the court concluded that the wife failed to show that the alleged tortfeasor, a licensed social worker, had the requisite control over the husband to give rise to a legal duty as articulated by the Georgia Supreme Court in Bradley Center, Inc. v. Wessner, 250 Ga. 199 (1982); specifically, the court found that at no time did the husband meet the involuntary commitment standard under O.C.G.A. § 37-3-1(9.1), and that even if the husband had exhibited the statutory conditions for involuntary confinement, the social worker alone could not have had him committed in accordance with O.C.G.A. § 37-3-81. Grijalva v. United States, 289 F. Supp. 2d 1372 (M.D. Ga. 2003).

Trial court erred in denying a recommendation filed by the Department of Behavioral Health and Developmental Disabilities that a patient be moved to a group home for outpatient involuntary treatment because the preponderance of the evidence supported a finding that the patient overcame the presumption under O.C.G.A. § 24-4-21 of a continued need for inpatient involuntary treatment, and there was no evidence to support the trial court's finding that under O.C.G.A. § 37-3-1(9.1), the patient posed a substantial risk of imminent harm to the patient or others or was so unable to care for the patient's own physical health and safety as to create an imminently life-endangering crisis; the group home would have only two other suitable patient occupants, both of whom would be under the supervision of live-in supervisors and would have little opportunity to pressure the patient into misconduct, the patient would not be permitted to leave the group home unsupervised, the manager of the group home testified that as soon as patients were admitted into the group home and evaluated, an individualized service plan was created, and there was no statutory requirement that a plan exist prior to release. Nelor v. State, 309 Ga. App. 165, 709 S.E.2d 904 (2011).

Primary treating physician acting as chief medical officer. — It is reasonable to permit a primary treating physician to act as chief medical officer for purposes of the discharge of his or her patients. Georgia Dep't of Human Resources v. Peeks, 261 Ga. 96, 403 S.E.2d 36 (1991).

When a hospital's chief medical officer appointed a patient's primary treating physician to act as chief medical officer for purposes of discharging a patient, the officer's failure to make the appointment in writing did not vitiate the appointment. Georgia Dep't of Human Resources v. Peeks, 261 Ga. 96, 403 S.E.2d 36 (1991).

Mental health records of a person who allegedly shot a number of people in a shopping mall were "clinical records" within the meaning of paragraph (2) of O.C.G.A. § 37-3-1, and therefore not subject to inspection under the Open Records Act. Southeastern Legal Found., Inc. v. Ledbetter, 260 Ga. 803, 400 S.E.2d 630 (1991).

Defendant failed to prove sanity. — Defendant failed to prove that the defendant was not insane when the evidence indicated, inter alia, that the defendant had multiple fixed delusions, including believing to be a secret service agent and owning the hospital where the defendant was committed. Gross v. State, 262 Ga. App. 328, 585 S.E.2d 671 (2003).

Patient's request for unconditional release denied. — Patient, who was involuntarily committed to a hospital after the patient was found not guilty by reason of insanity of several crimes, was not entitled to an unconditional release from the hospital because the patient, who had to take medication, had engaged in dangerous or threatening acts towards others, the patient's personality disorders and the patient's schizo-affective disorder qualified as mental illnesses under O.C.G.A. § 37-1-1(12), and the patient's schizo-affective disorder also would have made the defendant an imminent threat of harm to others if the defendant were unconditionally released. Dupree v. Schwarzkophf, No. S11A0290, 2011 Ga. LEXIS 508 (June 27, 2011).

Cited in Strickland v. Peacock, 88 Ga. App. 384, 77 S.E.2d 20 (1953); Pennewell

v. State, 148 Ga. App. 611, 251 S.E.2d 832 (1979); Bell v. State, 244 Ga. 211, 259 S.E.2d 465 (1979); Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980); Benham v. Edwards, 501 F. Supp. 1050 (N.D. Ga. 1980); Sorrells v. Sorrells, 247 Ga. 9, 274 S.E.2d 314 (1981); Gates v. State, 167 Ga. App. 353, 306 S.E.2d 411 (1983); Pope v. State, 172 Ga. App. 396, 323 S.E.2d 268 (1984); Nelson v. State, 254 Ga. 611, 331 S.E.2d 554 (1985); Roberts v. Grigsby, 177 Ga. App. 377, 339 S.E.2d 633 (1985); Nelson v. State Farm Life Ins. Co., 178 Ga. App. 670, 344 S.E.2d 492 (1986); Ledbetter v. Cannon, 192 Ga. App. 392, 384 S.E.2d 875 (1989); Heichelbech v. Evans, 798 F. Supp. 708 (M.D. Ga. 1992); Nagel v. State, 264 Ga. 150, 442 S.E.2d 446 (1994); Bruscato v. Gwinnett-Rockdale-Newton Cmty. Serv. Bd., 290 Ga. App. 638, 660 S.E.2d 440 (2008).

OPINIONS OF THE ATTORNEY GENERAL

"Governing authority of county" interpretation. — Hearing officers appointed pursuant to former Code 1933, § 88-502.23 (see O.C.G.A. § 37-3-84) were appointed for the benefit of the probate court making the appointment, not for the benefit of the county of residence of any patient receiving a hearing before such hearing officer; therefore, the reference in paragraph (4) of former Code 1933, § 88-501 (see O.C.G.A. § 37-3-1) to the "governing authority of the county" referred to the governing authority of the county in which the probate court was found. 1978 Op. Att'y Gen. No. U78-38.

Limitation of scope of patient. — An inmate transferred to Central State Hospital for treatment of a mental disorder would not be a patient within the meaning of this section. 1973 Op. Att'y Gen. No. 73-54 (see O.C.G.A. § 37-3-1).

RESEARCH REFERENCES

C.J.S. — 56 C.J.S., Mental Health, §§ 1, 3.

ALR. — Effect of death of appellant upon appeal from judgment of mental incompetence against him, 54 ALR2d 1161.

37-3-2. Authority of board to issue regulations; powers of department generally.

(a) The board shall issue regulations to implement this chapter in accordance with the intent of this chapter to safeguard the rights of the mentally ill, as set forth in Code Sections 37-3-100, 37-3-101, and 37-3-120, and Article 6 of this chapter.

(b) In addition to the other powers provided by this chapter, the department shall have the authority:

(1) To enforce the regulations issued by the board;

(2) To prescribe the forms of applications, records, medical certificates, and any other forms required or used under this chapter and the information required to be contained therein;

(3) To require such reports from any facility as it may find necessary to the performance of its duties or functions;

(4) To visit facilities regularly to review the hospitalization procedures applied to all patients;

(5) To determine the care and treatment being given all patients;

(6) To investigate complaints and make reports and recommendations relative to the same; and

(7) To make effective such procedures and orders as may be appropriate to carry out this chapter.

Notwithstanding the powers granted to the department under this Code section, the requirements of this Code section as to determination of treatment and care of patients and the investigation of complaints shall not apply to patients hospitalized in an institution operated by or under the control of the United States Department of Veterans Affairs or any other federal agency. (Ga. L. 1877, p. 113, §§ 1, 2, 4; Code 1882, §§ 1344b, 1344c, 1344e; Civil Code 1895, §§ 1412, 1413, 1415; Civil Code 1910, §§ 1574, 1575, 1577, 1595; Ga. L. 1931, p. 7, § 41; Code 1933, §§ 35-202, 35-203, 35-205; Ga. L. 1958, p. 697, § 21; Ga. L. 1960, p. 837, § 19; Code 1933, § 88-519, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-508.1, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-507.1, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1990, p. 45, § 1.)

JUDICIAL DECISIONS

Cited in Myers v. State, 143 Ga. App. 195, 237 S.E.2d 662 (1977); Dubose v. State, 148 Ga. App. 9, 251 S.E.2d 15 (1978).

37-3-3. Validity of hospitalization orders entered before September 1, 1978; establishment of regulations as to orders authorizing continued hospitalization of patients hospitalized before September 1, 1978.

No hospitalization of a mentally ill person lawful before September 1, 1978, shall be deemed unlawful because of the enactment of this chapter. The board is authorized to establish reasonable regulations to require that the chief medical officer of each treatment facility apply under Code Section 37-3-83 for an order authorizing continued hospitalization of any patient for whom such hospitalization is necessary and who was initially hospitalized under an order of a court prior to September 1, 1978. Such prior orders of hospitalization entered by the courts, unless superseded at an earlier date by an order under this chapter or unless such prior orders expire under their own terms at an earlier date, shall remain valid until March 1, 1979, after which all such orders shall be null and void and of no effect. (Code 1933, § 88-508.7, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-507.6, enacted by Ga. L. 1978, p. 1789, § 1.)

37-3-4. Immunity of hospitals, physicians, peace officers, or other private or public hospital employees from liability for actions taken in good faith compliance with admission and discharge provisions of chapter; immunity not applicable to failure to meet standard of care in provision of treatment.

Any hospital or any physician, psychologist, peace officer, attorney, or health official, or any hospital official, agent, or other person employed by a private hospital or at a facility operated by the state, by a political subdivision of the state, or by a hospital authority created pursuant to Article 4 of Chapter 7 of Title 31, who acts in good faith in compliance with the admission and discharge provisions of this chapter shall be immune from civil or criminal liability for his or her actions in connection with the admission of a patient to a facility or the discharge of a patient from a facility; provided, however, that nothing in this Code section shall be construed to relieve any hospital or any physician, psychologist, peace officer, attorney, or health official, or any hospital official, agent, or other person employed by a private hospital or at a facility operated by the state, by a political subdivision of the state, or by a hospital authority created pursuant to Article 4 of Chapter 7 of Title 31, from liability for failing to meet the applicable standard of care in the provision of treatment to a patient. (Code 1933, § 88-502.18, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.23, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1981, p. 996, § 3; Ga. L. 2011, p. 346, § 2/HB 343.)

The 2011 amendment, effective July 1, 2011, inserted "hospital or any" near the beginning, inserted "or her", near the middle, and added the proviso at the end.

Cross references. — Liability of law enforcement officers for actions taken at scene of emergency, § 35-1-7. Employment and training of peace officers, T. 35, C. 8. Physicians generally, T. 43, C. 34. Psychologists generally, T. 43, C. 39.

Law reviews. — For annual survey of law on trial practice and procedure, see 62 Mercer L. Rev. 339 (2010).

JUDICIAL DECISIONS

Facility entitled to sovereign immunity. — O.C.G.A. § 37-3-4 was inapplicable in an action involving a facility entitled to sovereign immunity since enactment of the Tort Claims Act, O.C.G.A. § 50-21-20 et seq., eliminated any other avenue for pursuing the state in a tort action. Northwest Ga. Regional Hosp. v. Wilkins, 220 Ga. App. 534, 469 S.E.2d 786 (1996).

Discharge of dangerous patient. — When the treatment of a mental patient involves an exercise of "control" over the patient by a physician who knows or should know that the patient is likely to cause bodily harm to others, an independent duty arises from that relationship and falls upon the physician to exercise that control with such reasonable care as to prevent harm to others at the hands of the patient. Bradley Center, Inc. v. Wessner, 250 Ga. 199, 296 S.E.2d 693 (1982).

Discharge of suicidal patient. — Doctor did not act in good faith compliance with the admission and discharge provi-

sions by failing to detain suicidal son against the son's will when the doctor knew or should have known that the son posed a serious threat to himself. Purcell v. Breese, 250 Ga. App. 472, 552 S.E.2d 865 (2001).

Cited in Roberts v. Grigsby, 177 Ga. App. 377, 339 S.E.2d 633 (1985).

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This Code section evidences a legislative intent to shield peace officers from liability in those situations where their action is taken in good faith and where there are reasonable grounds to believe: (1) that the individual arrested was suffering from mental illness; and (2) that imminent danger existed (a) that the individual would harm oneself or others if not immediately hospitalized, or (b) that one was incapable of caring for one's physical health and safety. 1969 Op. Att'y Gen. No. 69-49 (see O.C.G.A. § 37-3-4).

This Code section evidences an intent to immunize those actions of a peace officer which are authorized by statute in a nonnegligent manner. 1969 Op. Att'y Gen. No. 69-49 (see O.C.G.A. § 37-3-4).

RESEARCH REFERENCES

ALR. — Liability for malicious prosecution predicated upon institution of, or conduct in connection with, insanity proceedings, 30 ALR3d 455.

Liability for false imprisonment predicated upon institution of, or conduct in connection with, insanity proceedings, 30 ALR3d 523.

Liability of one releasing institutionalized mental patient for harm he causes, 38 ALR3d 699.

Liability of mental care facility for suicide of patient or former patient, 19 ALR4th 7.

Malpractice liability based on prior treatment of mental disorder alleged to relate to patient's conviction of crime, 28 ALR4th 712.

37-3-5. Apprehension by peace officer of patient who leaves facility without permission.

If, during the period of involuntary hospitalization pursuant to any valid physician's certificate, court order, or order by the hearing examiner authorized by this chapter, a patient escapes or otherwise leaves a facility without permission, the facility may advise any peace officer that the patient has escaped or otherwise left the facility without permission; and the peace officer shall be authorized to take the patient into custody and return him to such facility. (Code 1933, § 88-507.9, enacted by Ga. L. 1979, p. 723, § 10.)

37-3-6. Approval of private facilities as emergency receiving, evaluating, or treatment facility; powers and duties of private facilities; right to deny admission.

Any private facility within this state may be approved as an emergency receiving facility, an evaluating facility, or a treatment facility by the department at the request of or with the consent of the governing officers of such private facility. When so approved, the private facility shall have all powers given to the corresponding type of state owned or

state operated facility under the provisions of this chapter on voluntary admission, emergency admission, admission for evaluation, and involuntary hospitalization and shall have all duties and obligations of such facilities imposed by this chapter, except that any such private facility may decline to accept any patient who is unable to pay it for hospitalization or for whom it has no available space. (Code 1933, § 88-508.6, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-507.5, enacted by Ga. L. 1978, p. 1789, § 1.)

JUDICIAL DECISIONS

Duty of private hospital toward patient. — Private hospital in which a patient is placed for treatment owes the duty of safeguarding and protecting the patient from any known or reasonably apprehended danger from oneself which may be due to one's mental incapacity, and to use ordinary and reasonable care to prevent such danger. Brawner v. Bussell, 50 Ga. App. 840, 179 S.E. 228 (1935).

RESEARCH REFERENCES

ALR. — Liability of one releasing institutionalized mental patient for harm he causes, 38 ALR3d 699.

37-3-7. Abandoning or leaving patients on grounds of psychiatric hospital.

Any person who abandons or leaves any patient on the grounds of any state owned or state operated psychiatric hospital without the permission of the regional state hospital administrator of the hospital commits the offense of criminal trespass. (Ga. L. 1918, p. 274, § 1; Code 1933, § 35-9901; Code 1933, § 88-2715, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2002, p. 1324, § 1-18.)

Cross references. — Penalty for criminal trespass, § 16-7-21.

37-3-8. Loitering or trespassing on grounds of psychiatric hospital.

Any person who loiters about or trespasses on the property of any state owned or state operated psychiatric hospital or drives or rides over the grounds or roads of such hospital property with horses, automobiles, bicycles, motorcycles, or other vehicles, except in accordance with such rules and regulations as may be posted under the authority of the board, commits the offense of criminal trespass. (Ga. L. 1918, p. 274, § 1; Code 1933, § 35-9902; Code 1933, § 88-2716, enacted by Ga. L. 1964, p. 499, § 1.)

Cross references. — Penalty for criminal trespass, § 16-7-21.

RESEARCH REFERENCES

ALR. — Validity of loitering statutes and ordinances, 25 ALR3d 836.

Validity, construction, and application of loitering statutes and ordinances, 72 ALR5th 1.

ARTICLE 2

HOSPITALIZATION AND TREATMENT OF VOLUNTARY PATIENTS

37-3-20. Admission of voluntary patients; consent of parent or guardian to treatment; giving notice of rights to patient at time of admission.

(a) The chief medical officer of any facility may receive for observation and diagnosis any patient 12 years of age or older making application therefor, any patient under 18 years of age for whom such application is made by his parent or guardian, and any patient who has been declared legally incompetent and for whom such application is made by his guardian. If found to show evidence of mental illness and to be suitable for treatment, such person may be given care and treatment at such facility; and such person may be detained by such facility until discharged pursuant to Code Section 37-3-21 or 37-3-22. The parents or guardian of a minor child must give written consent to such treatment. An individualized service plan shall be developed for such person as soon as possible.

(b) Any individual voluntarily admitted to a facility under this Code section shall be given notice of his rights under this chapter at the time of his admission. (Ga. L. 1952, p. 94, § 1; Ga. L. 1958, p. 697, § 2; Ga. L. 1960, p. 837, § 2; Code 1933, § 88-502, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-503.1, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1.)

Law reviews. — For article comparing hospitalization of mentally ill under Code 1933, Ch. 49-6, to present procedures under this chapter, see 23 Ga. B.J. 191 (1960). For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969). For annual survey of law on trial practice and procedure, see 62 Mercer L. Rev. 339 (2010).

For note comparing procedures for hospitalization of the mentally ill in Georgia to other jurisdictions and suggesting improvements, see 7 Mercer L. Rev. 361 (1956). For note, "Due Process Rights of Minors and Parental Authority in Civil Commitment Cases," see 31 Mercer L. Rev. 617 (1980).

For comment on Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979); Secretary of Pub. Welfare v. Institutionalized Juveniles, 442 U.S. 640, 99 S. Ct. 2523, 61 L. Ed. 2d 142 (1979), regarding juvenile commitment to state mental

hospitals upon application of parents or guardians, see 29 Emory L.J. 517 (1980).

JUDICIAL DECISIONS

Constitutionality. — State's procedures for admitting a child for treatment to a state mental hospital are consistent with constitutional guarantees. Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979), for comment, see 29 Emory L.J. 517 (1980).

Responsibility for regulations on procedures governing admitting minors. — Georgia's mental health director has not published any state-wide regulations defining what specific procedures each superintendent must employ when admitting a child under 18. Each regional hospital's superintendent is responsible for the procedures in his or her facility. Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979), for comment, see 29 Emory L.J. 517 (1980).

In order to assert the affirmative defense of immunity from liability for good faith compliance with the statutory procedures for holding a voluntary patient after request for discharge, it was first necessary to show plaintiff was, in fact, a voluntary patient as defined by statute. Heath v. Emory Univ. Hosp., 208 Ga. App. 629, 431 S.E.2d 427 (1993).

Cited in J.L. v. Parham, 412 F. Supp. 112 (M.D. Ga. 1976); Heath v. Peachtree Parkwood Hosp., 200 Ga. App. 118, 407 S.E.2d 406 (1991); Heichelbech v. Evans, 798 F. Supp. 708 (M.D. Ga. 1992).

OPINIONS OF THE ATTORNEY GENERAL

Prerequisites to admitting mentally retarded minor. — Pursuant to former Code 1933, § 24A-2891 (see O.C.G.A. § 15-11-40), a mentally retarded child may not properly be committed to the Department of Human Resources unless the department first advises the court that the department has appropriate facilities available to serve that particular child; similarly, a mentally ill child may not be committed unless the child is in need of hospitalization because the child is likely to injure oneself or others if not hospitalized or because, due to one's mental illness, one is incapable of caring for one's physical health and safety. 1976 Op. Att'y Gen. No. 76-111.

37-3-21. Discharge of voluntary patients upon recovery or termination of need for hospitalization; notice of discharge.

(a) The chief medical officer of the facility shall discharge any voluntary patient who has recovered from his mental illness or who has sufficiently improved that the chief medical officer determines, after consideration of the recommendations of the treatment team, that hospitalization of the patient is no longer necessary, provided that in no event shall any such patient be so discharged if, in the judgment of the chief medical officer of such facility, such discharge would be unsafe for the patient or others. The chief medical officer may designate in writing a physician or psychologist, who may be the attending physician or treating psychologist, to make these discharge decisions. If the decision of the designee is contrary to the recommendations of the treatment team or of a physician or psychologist member of the treatment team,

the issue must go to the chief medical officer for final determination. Where there is concurrence, the decision of the designee will be final.

(b) Notice of discharge of patients who have been transferred from involuntary to voluntary status shall be given pursuant to Code Section 37-3-24. (Ga. L. 1874, p. 91, § 1; Code 1882, § 1344a; Ga. L. 1884-85, p. 61, § 1; Civil Code 1895, § 1416; Civil Code 1910, § 1578; Ga. L. 1931, p. 7, § 41; Code 1933, § 35-206; Ga. L. 1952, p. 94, § 2; Ga. L. 1958, p. 697, § 3; Ga. L. 1960, p. 837, § 3; Code 1933, § 88-503, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-503.2, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1991, p. 1059, § 2; Ga. L. 1992, p. 1902, § 2.)

JUDICIAL DECISIONS

Primary treating physician acting as chief medical officer. — It is reasonable to permit a primary treating physician to act as chief medical officer for purposes of the discharge of his or her patients. Georgia Dep't of Human Resources v. Peeks, 261 Ga. 96, 403 S.E.2d 36 (1991).

When a hospital's chief medical officer appointed a patient's primary treating physician to act as chief medical officer for purposes of discharging a patient, the officer's failure to make the appointment in writing did not vitiate the appointment. Georgia Dep't of Human Resources v. Peeks, 261 Ga. 96, 403 S.E.2d 36 (1991).

Section inapplicable to discharge of outpatient. — O.C.G.A. § 37-3-21 applies to inpatients and did not require a chief medical officer to examine an outpatient prior to the patient's discharge from a facility. Ward v. Emanuel County Bd. of Health, 218 Ga. App. 382, 461 S.E.2d 559 (1995).

Section inapplicable to release on pass. — O.C.G.A. §§ 37-3-21 and 37-3-22 did not apply in a negligence action against a hospital based on the hospital's release on a 24-hour pass of a patient who subsequently murdered the patient's mother. Board of Regents v. Riddle, 229 Ga. App. 15, 493 S.E.2d 208 (1997).

Cited in J.L. v. Parham, 412 F. Supp. 112 (M.D. Ga. 1976); Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979).

RESEARCH REFERENCES

ALR. — Liability of one releasing institutionalized mental patient for harm he causes, 38 ALR3d 699.

37-3-22. Right of voluntary patient to discharge upon application; exception; procedure on denial of application for discharge; notice of discharge.

(a) A voluntary patient, other than a minor child for whom admission has been sought by his parents or guardian, who has admitted himself to a facility pursuant to subsection (a) of Code Section 37-3-20 or any voluntary patient's personal representative, legal guardian, parent, spouse, attorney, or adult next of kin may request such patient's discharge in writing at any time after his admission. If the patient was admitted on his own application and the request for discharge is made

by a person other than the patient, the discharge shall be conditioned upon the agreement of the patient thereto, unless such other person is the legal guardian of the patient's person. The request for discharge may be submitted to the chief medical officer or to any staff physician or staff psychologist or staff registered nurse of the facility for transmittal to the chief medical officer. If the patient or another on his behalf makes an oral request for release to any member of the staff or other service provider, the patient must within 24 hours be given assistance in preparing a written request. The person to whom a written request is submitted shall deliver the request to the chief medical officer within 24 hours, Saturdays, Sundays, and legal holidays excluded. Within 72 hours, excluding Sundays and legal holidays, of the delivery of a written request for release to the chief medical officer, the patient must be discharged from the facility, unless the chief medical officer finds that the discharge would be unsafe for the patient or others, in which case proceedings for involuntary treatment must be initiated under either Code Section 37-3-41, Code Section 37-3-61, or Code Section 37-3-81.

(b) Notice of discharge of patients who have been transferred from involuntary to voluntary status shall be given pursuant to Code Section 37-3-24. (Ga. L. 1952, p. 94, § 3; Ga. L. 1958, p. 697, § 4; Ga. L. 1960, p. 837, § 4; Code 1933, § 88-504, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-503.3, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1983, p. 3, § 28; Ga. L. 1991, p. 1059, § 9; Ga. L. 1992, p. 6, § 37.)

JUDICIAL DECISIONS

Voluntary patients with legal guardians. — State's policy of discharging a voluntary patient who has a legal guardian or affording the patient an involuntary commitment hearing only upon the request of the patient's guardian deprives the patient of the patient's right to challenge the patient's confinement and violates due process. Heichelbech v. Evans, 798 F. Supp. 708 (M.D. Ga. 1992), aff'd, 995 F.2d 237 (11th Cir.), cert. denied, 510 U.S. 947, 114 S. Ct. 389, 126 L. Ed. 2d 338 (1993).

Distinguishing between voluntary patients with legal guardians and those without in the state's procedure for discharge from a state mental hospital does not violate equal protection since there is a rational basis for the distinction. Heichelbech v. Evans, 798 F. Supp. 708 (M.D. Ga. 1992), aff'd, 995 F.2d 237 (11th Cir.), cert. denied, 510 U.S. 947, 114 S. Ct. 389, 126 L. Ed. 2d 338 (1993).

Section inapplicable to release on pass. — O.C.G.A. §§ 37-3-21 and 37-3-22 did not apply in a negligence action against a hospital based on the hospital's release on a 24-hour pass of a patient who subsequently murdered the patient's mother. Board of Regents v. Riddle, 229 Ga. App. 15, 493 S.E.2d 208 (1997).

Cited in J.L. v. Parham, 412 F. Supp. 112 (M.D. Ga. 1976); Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Voluntary patient at a state hospital may be picked up and returned to the hospital by the hospital police if the patient leaves without making a request to be discharged and without permission. 1970 Op. Att'y Gen. No. U70-183.

RESEARCH REFERENCES

ALR. — Liability of one releasing institutionalized mental patient for harm he causes, 38 ALR3d 699.

37-3-23. Giving voluntary patients periodic notice of rights.

At the time of his admission and each six months thereafter, any voluntary patient admitted to a facility under Code Section 37-3-20 or transferred to voluntary status under Code Section 37-3-24 shall be notified in writing of his right to discharge upon application under Code Section 37-3-22 and of all other rights granted to patients under this chapter. (Code 1933, § 88-503.4, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1.)

37-3-24. Transfer of involuntary patients to voluntary status; notice of transfer and of discharge of patients so transferred; discharge of transferred patient charged with criminal offense.

Any involuntary patient may apply to be transferred to voluntary status of hospitalization and shall be so transferred if he is able to understand and exercise the rights and powers of a voluntary patient unless the chief medical officer finds that this would not be in the best interest of the patient, which finding shall be entered in the patient's clinical record and signed by the chief medical officer. In any case in which such transfer to voluntary status occurs and in any case in which a patient transferred to voluntary status is discharged, notice of such transfer or discharge, as the case may be, shall be given: to the patient and his representatives; if the patient's hospitalization was ordered by the court, to the court which entered such order; if the patient was admitted to a facility under subsection (a) of Code Section 37-3-41, to the physician or psychologist executing the certificate; and, if the patient was under criminal charges, of which the facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient. An involuntary patient transferred to voluntary status, which patient is under criminal charges, notice of which charges have been given in writing to the facility, may only be discharged into the physical custody of the law enforcement agency originally having custody of the patient. Such agency shall assume such custody within five days after the

mailing of notification to the agency pursuant to this Code section. (Code 1933, § 88-503.5, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, § 6; Ga. L. 1982, p. 3, § 37; Ga. L. 1991, p. 1059, § 10; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

ALR. — Malpractice liability based on prior treatment of mental disorder alleged to relate to patient's conviction of crime, 28 ALR4th 712.

ARTICLE 3

EXAMINATION, HOSPITALIZATION, AND TREATMENT OF INVOLUNTARY PATIENTS

JUDICIAL DECISIONS

Private mental hospitals. — Georgia statutes neither compel nor encourage involuntary commitment, precluding a private mental hospital from becoming a state actor by state compulsion, for purposes of a suit under the federal civil rights act. Harvey v. Harvey, 949 F.2d 1127 (11th Cir. 1992).

Part 1

Emergency Receiving Facilities for Examination of Persons Apprehended Pursuant to Physician's Certificate, Court Order, etc.

37-3-40. Designation by department of emergency receiving facilities.

Any state owned and state operated facility may be designated by the department as an emergency receiving facility. The department shall maintain an emergency receiving facility at each Georgia regional hospital which shall accept, under Code Sections 37-3-41 through 37-3-44, patients found in any county in the service region of the hospital. Any other facility within the State of Georgia may be so designated by the department at the request of or with the consent of the governing officers of the facility. (Code 1933, § 88-504.1, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1.)

JUDICIAL DECISIONS

Cited in Heath v. Peachtree Parkwood Hosp., 200 Ga. App. 118, 407 S.E.2d 406 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county is a county in which the procedure is governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

RESEARCH REFERENCES

ALR. — Hospital's liability as to diagnosis and care of patients brought to emergency ward, 72 ALR2d 396.

37-3-41. Emergency admission based on physician's certification or court order; report by apprehending officer; entry of treatment order into patient's clinical record; authority of other personnel to act under statute.

(a) Any physician within this state may execute a certificate stating that he has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be a mentally ill person requiring involuntary treatment. A physician's certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

(b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such person into custody and deliver him forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is a mentally ill person requiring involuntary treatment. The court order shall expire seven days after it is executed.

(c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which

such person was taken into custody. The report and either the physician's certificate or court order authorizing such taking into custody shall be made a part of the patient's clinical record.

(d) Any psychologist, clinical social worker, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, or a clinical nurse specialist in psychiatric/mental health acting under this Code section. For purposes of this subsection, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist, the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker, and the term "clinical nurse specialist in psychiatric/mental health" means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health. (Code 1933, § 88-504.2, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1971, p. 796, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1981, p. 996, § 4; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 2531, § 1.1; Ga. L. 1994, p. 1249, § 1.)

Cross references. — Arrest of persons, T. 17, C. 4. Licensing of applied psychologists, T. 43, C. 39.

Law reviews. — For survey article on criminal law, see 59 Mercer L. Rev. 89 (2007).

For note comparing procedures for hospitalization of the mentally ill in Georgia to other jurisdictions and suggesting improvements, see 7 Mercer L. Rev. 361 (1956).

For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Civil Rights Act not applicable. — Private commitment, which involved the hospitalization and guardianship process allowed by state law, did not involve action "under color" of state law so as to invoke the protection of the federal civil rights act. Harvey v. Harvey, 749 F. Supp. 1118 (M.D. Ga. 1990), aff'd, 949 F.2d 1127 (11th Cir. 1992).

Order does not authorize full inventory search. — Search of a civil detainee under O.C.G.A. §§ 37-3-41(a) and 37-7-41(b) before being placed in a patrol car, absent some valid reason for the officer conducting the search to take custody of the clothing, container, or bag searched, does not come within the ambit of allowable inventory searches because such an inventory presupposes some valid reason for taking custody of the object being searched; an inventory search which is not necessary to achieve the recognized custodial goals of such a search is not permissible, and no controlling precedent authorizes a full inventory search on the basis that a detainee will be transported to another location in a patrol car for a mental health evaluation. Lindsey v. State, 282 Ga. App. 644, 639 S.E.2d 584 (2006).

Drug evidence found in a defendant's pocket by a police officer who was execut-

ing a civil order to apprehend the defendant for a mental health evaluation under O.C.G.A. §§ 37-3-41(a) and 37-7-41(b) should have been suppressed because the search in which the officer found the evidence did not come within the ambit of allowable inventory searches; no full inventory search was authorized on the basis that the defendant was to be transported in a patrol car to the location of the evaluation. Lindsey v. State, 282 Ga. App. 644, 639 S.E.2d 584 (2006).

Acts admitted by insanity plea sufficient to sustain criteria for civil commitment. — Acts admitted by a plea of not guilty by reason of insanity establish that the defendant meets the criteria for civil commitment. Once that condition had been established it is presumed to continue at the time of an application for release. Moses v. State, 167 Ga. App. 556, 307 S.E.2d 35 (1983), overruled on other grounds, Nagel v. State, 262 Ga. 888, 427 S.E.2d 490 (1993).

Action for false imprisonment. — When one is held in custody pursuant to a void or defective physician's certificate, there is a viable claim for false imprisonment, but only if the certificate was not issued in "good faith." Williams v. Smith, 179 Ga. App. 712, 348 S.E.2d 50 (1986).

When one is taken into custody pursuant to a procedurally valid certificate of a physician authorizing involuntary mental treatment, the resulting detention is not "unlawful"; therefore, a cause of action for false imprisonment will not lie for such detention, although the detention may give rise to other claims. Williams v. Smith, 179 Ga. App. 712, 348 S.E.2d 50 (1986).

Admission at a hospital which was valid and proper precludes liability for false imprisonment against any party defendant for that admission. Heath v. Emory Univ. Hosp., 208 Ga. App. 629, 431 S.E.2d 427 (1993).

"Lawful" detention does not become "unlawful" by failure of a facility to provide a person detained with the notices required by O.C.G.A. § 37-3-44, and the trial court erred in ruling that the plaintiff had a viable claim for false imprisonment based upon such failure. Ridgeview Inst., Inc. v. Handley, 224 Ga. App. 533, 481 S.E.2d 531 (1997).

"False imprisonment" at mental hospital involves a medical question. — Although action was one for false imprisonment, the standard to determine whether or not the plaintiff was unlawfully detained by institutionalization at a mental hospital was a medical one; therefore, the court looked to cases involving medical malpractice in determining whether or not the defendant exercised reasonable medical care in diagnosing the plaintiff's mental condition and whether the defendant acted properly based upon that diagnosis. Carter v. Landy, 163 Ga. App. 509, 295 S.E.2d 177 (1982), overruled on other grounds, Williams v. Smith, 179 Ga. App. 712, 348 S.E.2d 50 (1986).

Observance of proper medical and legal procedures supported summary judgment. — Defendant's undisputed expert medical testimony that the defendant exercised proper medical care in rendering the defendant's diagnosis and utilized proper legal procedures in effectuating transfer of plaintiff patient to Georgia Regional Hospital supported grant of partial summary judgment in defendant's favor as to the issue of false imprisonment. Carter v. Landy, 163 Ga. App. 509, 295 S.E.2d 177 (1982), overruled on other grounds, Williams v. Smith, 179 Ga. App. 712, 348 S.E.2d 50 (1986).

Physician's reliance on personal observation. — In determining opinions as to the mental condition of a person, a physician can rely upon the physician's personal observation as well as testimony of behavior observed by others. Carter v. Landy, 163 Ga. App. 509, 295 S.E.2d 177 (1982), overruled on other grounds, Williams v. Smith, 179 Ga. App. 712, 348 S.E.2d 50 (1986).

Order does not authorize search incident to arrest. — Drug evidence found in a defendant's pocket by a police officer who was executing a civil order to apprehend the defendant for a mental health evaluation under O.C.G.A. §§ 37-3-41(a) and 37-7-41(b) should have been suppressed because such an order authorized civil protective custody, not a criminal arrest pursuant to O.C.G.A. §§ 17-4-1 and 17-4-40; because no criminal arrest had taken place based on probable cause, the defendant had not been arrested such

that a search incident to an arrest was authorized. Lindsey v. State, 282 Ga. App. 644, 639 S.E.2d 584 (2006).

Cited in J.L. v. Parham, 412 F. Supp. 112 (M.D. Ga. 1976); Lindsey v. State, 252 Ga. 493, 314 S.E.2d 881 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

Certificate or affidavits mentioned in former Code 1933, § 88-504.2 (see O.C.G.A. § 37-3-41) were the minimum basis for an order of the court, and were of an evidentiary nature; the certificates or affidavits did not make it mandatory that the court issue the order, for this would deprive the court of the jurisdiction and discretion granted by former Code 1933, § 24-1901 (see O.C.G.A. § 15-9-30); the weight of evidence necessary for detention order was not that there was "probable cause" for the detention, but, rather, that there was "sufficient evidence." 1972 Op. Att'y Gen. No. U72-29.

Probate judge does not have a mandatory duty to issue the order for transportation of mentally ill persons. 1977 Op. Att'y Gen. No. U77-64.

37-3-42. Emergency admission of persons arrested for penal offenses; report by officer; entry of report into clinical record.

(a) A peace officer may take any person to a physician within the county or an adjoining county for emergency examination by the physician, as provided in Code Section 37-3-41, or directly to an emergency receiving facility if (1) the person is committing a penal offense, and (2) the peace officer has probable cause for believing that the person is a mentally ill person requiring involuntary treatment. The peace officer need not formally tender charges against the individual prior to taking the individual to a physician or an emergency receiving facility under this Code section. The peace officer shall execute a written report detailing the circumstances under which the person was taken into custody; and this report shall be made a part of the patient's clinical record.

(b) Any psychologist may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist acting under this Code section. For purposes of this subsection, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist. (Code 1933, § 88-504.3, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1981, p. 996, § 4; Ga. L. 1987, p. 3, § 37.)

Cross references. — Arrest of persons, T. 17, C. 4. Licensing of applied psychologists, T. 43, C. 39.

JUDICIAL DECISIONS

Cited in Benham v. Edwards, 501 F. Supp. 1050 (N.D. Ga. 1980).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

37-3-43. Procedure upon admission; notice of proposed discharge.

(a) A patient who is admitted to an emergency receiving facility shall be examined by a physician as soon thereafter as possible but in any event within 48 hours and may be given such emergency treatment as is indicated by good medical practice. The patient must be discharged within 48 hours of his admission unless:

(1) An examining physician or psychologist concludes that there is reason to believe that the patient may be a mentally ill person requiring involuntary treatment and executes a certificate to that effect within such time; or

(2) The patient is under criminal charges, notice of which has been given in writing to the facility, in which case the provisions of Code Section 37-3-95 shall apply.

Nothing in this chapter shall be construed to prohibit a physician or psychologist who previously executed a certificate authorized by the provisions of this chapter from executing any other certificate provided for in this chapter for the same or any other patient.

(b) Within 24 hours of the execution of the certificate under paragraph (1) of subsection (a) of this Code section, the patient shall be transported, as provided in Code Section 37-3-101, to an evaluating facility where he shall be received pursuant to Code Section 37-3-63 unless the patient has been determined and certified to meet all of the outpatient treatment requirements of paragraphs (1) and (2) of subsection (c) of Code Section 37-3-90, in which event the patient shall be discharged under the conditions provided in Code Section 37-3-91, except that if the patient is under criminal charges, notice of which has been given in writing to the facility, the provisions of Code Section 37-3-95 shall apply.

(c) Notice of any proposed discharge shall be given to the patient and his representatives; if the patient was admitted to the facility under subsection (a) of Code Section 37-3-41, to the physician or psychologist who executed the certificate; if the patient was admitted to the facility under subsection (b) of Code Section 37-3-41, to the court which issued

the order; and, if the patient was under criminal charges, written notice of which had been given to the facility, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient. (Ga. L. 1958, p. 697, § 9; Ga. L. 1960, p. 837, § 9; Code 1933, § 88-509, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, §§ 88-504.4, 88-504.5, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1977, p. 1293, § 8; Ga. L. 1978, p. 1789, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1982, p. 937, §§ 5, 7; Ga. L. 1985, p. 1024, § 1; Ga. L. 1986, p. 1098, § 2; Ga. L. 1991, p. 1059, § 11; Ga. L. 1992, p. 1902, § 3; Ga. L. 1996, p. 6, § 37; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Arrest of persons, T. 17, C. 4.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Cited in J.L. v. Parham, 412 F. Supp. 112 (M.D. Ga. 1976).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

RESEARCH REFERENCES

ALR. — Liability of one releasing institutionalized mental patient for harm he causes, 38 ALR3d 699.

37-3-44. Giving patient and his representatives notice of their rights upon patient's admission to emergency receiving facility.

(a) Immediately upon arrival of a patient at an emergency receiving facility under Code Section 37-3-43, the facility shall give the patient written notice of his right to petition for a writ of habeas corpus or for a protective order under Code Section 37-3-148. This written notice shall also inform the patient that he has a right to legal counsel and that, if the patient is unable to afford counsel, the court will appoint counsel.

(b) The notice informing the patient's representatives of the patient's hospitalization in an emergency receiving facility shall include a clear notification that the representatives may petition for a writ of habeas

corpus or for a protective order under Code Section 37-3-148. (Code 1933, § 88-504.6, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1986, p. 1098, § 2.)

Cross references. — Arrest of persons, T. 17, C. 4.

JUDICIAL DECISIONS

Precepts of due process require a clear and convincing standard of proof in a civil proceeding to commit an individual to a mental hospital involuntarily. Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979).

Failure to give notice. — "Lawful" detention does not become "unlawful" by failure of a facility to provide a person detained with the notices required by O.C.G.A. § 37-3-44, and the trial court erred in ruling that plaintiff had a viable claim for false imprisonment based upon such failure. Ridgeview Inst., Inc. v. Handley, 224 Ga. App. 533, 481 S.E.2d 531 (1997).

Cited in Carter v. Landy, 163 Ga. App. 509, 295 S.E.2d 177 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county is was county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

RESEARCH REFERENCES

ALR. — Showing as to mental condition which will entitle one restrained on ground of insanity to release, 19 ALR 715.

May proceedings to have a person declared insane and to appoint a conservator or committee of his person or estate rest upon substituted or constructive service of process, 175 ALR 1324.

Hospital's liability as to diagnosis and care of patients brought to emergency ward, 72 ALR2d 396.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 ALR4th 563.

Part 2

Evaluating Facilities for Examination of Persons Ordered to Undergo Evaluation for Mental Illness

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Adequacy of Quasi-Miranda Warning Prior to Involuntary Civil Commitment, 40 POF2d 733.

Wrongful Confinement to a Mental Health or Developmental Disabilities Facility, 44 POF3d 217.

37-3-60. Designation of evaluating facilities.

Any state owned or state operated facility may be designated by the department as an evaluating facility. The department shall maintain an evaluating facility at each Georgia regional hospital which shall accept, under Code Sections 37-3-61 through 37-3-65, patients found in

any county in the service region of the hospital designated by the department. Any other facility within the State of Georgia may be so designated by the department at the request of or with the consent of the governing officers of the facility. (Code 1933, § 88-505.1, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

37-3-61. Initiation of proceedings for court ordered evaluation.

Proceedings for a court ordered evaluation may be initiated in the following manner:

(1) Any person may file an application executed under oath with the community mental health center for a court ordered evaluation of a person located within that county who is alleged by such application to be a mentally ill person requiring involuntary treatment. Upon the filing of such application, the community mental health center shall make a preliminary investigation and, if the investigation shows that there is probable cause to believe that such allegation is true, it shall file a petition with the court in the county where the patient is located seeking an involuntary admission for evaluation; and

(2) Any person may file with the court a petition executed under oath alleging that a person within the county is a mentally ill person requiring involuntary treatment. The petition must be accompanied by the certificate of a physician or psychologist stating that he has examined the patient within the preceding five days and has found that the patient may be a mentally ill person requiring involuntary treatment and that a full evaluation of the patient is necessary. (Code 1933, § 88-505.2, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1991, p. 1059, § 12; Ga. L. 1993, p. 1445, § 17.2.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this

Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

JUDICIAL DECISIONS

Acts admitted by insanity plea sufficient to sustain criteria for civil commitment. — Acts admitted by a plea of not guilty by reason of insanity establish that the defendant meets the criteria for civil commitment. Once that condition had been established it is presumed to continue at the time of an application for release. Moses v. State, 167 Ga. App. 556, 307 S.E.2d 35 (1983), overruled on other grounds, Nagel v. State, 262 Ga. 888, 427 S.E.2d 490 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Statute specifies two methods in which any person may apply for a court-ordered evaluation of an alleged mentally ill person: one may (1) file an application, executed under oath, with the county health department alleging that a patient is mentally ill and is either a danger to oneself or others or is incapable of caring for the patient's physical health and safety; or (2) file a petition with the probate court, executed under oath, alleging that a patient within the county is mentally ill and is either a danger to oneself or others or is incapable of caring for the patient's physical health and safety; the General Assembly intended that neither method has preference over the other. 1971 Op. Att'y Gen. No. 71-131.

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

RESEARCH REFERENCES

ALR. — Validity and construction of statutes providing for psychiatric examination of accused to determine mental condition, 32 ALR2d 434.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 ALR3d 780.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 ALR4th 563.

37-3-62. Hearing on petition for court ordered evaluation; recipients of hearing notice; appointment of representatives; contents of notice; patient's right to counsel; waiver of hearing; procedure upon issuance of order for evaluation.

(a) The court shall review the petition filed under Code Section 37-3-61 and, if it finds reasonable cause to believe that the patient may be a mentally ill person requiring involuntary treatment, the court shall hold a full and fair hearing on the petition no sooner than ten days and no later than 15 days after such petition is filed. Within five days after the filing of such petition, the court shall serve notice of the hearing upon the patient and his representatives and upon the petitioner. Representatives for the patient shall be appointed pursuant to

Code Section 37-3-147, provided that the court shall designate the second representative or, in the absence of designation of one representative by the patient, both representatives; and, in the absence of such representatives or if the department is the guardian, the court shall appoint a guardian ad litem who is not the department. The notice required by this Code section shall include the time and place of the hearing; notice of the patient's right to counsel, that the patient or his representatives may apply for court appointed counsel if the patient cannot afford counsel, and that the court will appoint counsel unless the patient indicates in writing that he does not wish to be represented by counsel; and notice that the patient may waive his rights to a hearing under this Code section. A copy of the petition filed under Code Section 37-3-61 shall be attached to the notice. The patient shall have a right to counsel. If the patient is unable to afford counsel, the court shall appoint counsel for the patient unless the patient indicates in writing that he does not desire to be represented by counsel. The hearing may be waived by the patient after appointment or waiver of counsel.

(b) After a full and fair hearing or, if the hearing is waived, after a full review of the evidence, if the court is satisfied that immediate evaluation is necessary, the court shall issue an order to any peace officer to deliver the patient forthwith to the evaluating facility designated by the department to admit persons ordered by that court to be evaluated. (Code 1933, § 88-505.3, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1.)

Cross references. — Guardians of incapacitated adults, Ch. 5, T. 29.

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

RESEARCH REFERENCES

ALR. — May proceedings to have a person declared insane and to appoint a conservator or committee of his person or estate rest upon substituted or constructive service of process, 175 ALR 1324.

Alleged incompetent as witness in lunacy inquisition, 22 ALR2d 756.

Allowance of attorney's fee out of estate of alleged incompetent for services in connection with inquisition into sanity, 22 ALR2d 1438.

Validity and construction of statutes providing for psychiatric examination of accused to determine mental condition, 32 ALR2d 434.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 ALR3d 780.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 ALR4th 563.

37-3-63. Admission of persons to evaluating facilities for evaluation and emergency treatment.

Any person who is brought to an evaluating facility under Code Section 37-3-43 or under a court order as provided in Code Section 37-3-62 shall be received for evaluation and such treatment as is indicated by good medical practice. (Code 1933, § 88-505.4, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1.)

Law reviews. — For note, "Mental Health Commitment Procedures in Georgia," see 3 Ga. St. B.J. 230 (1966).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

37-3-64. Length of detention in evaluating facility; discharge; procedure upon determination of need for hospitalization or involuntary treatment; recipients of notice of discharge from facility.

(a) A patient who has been admitted to an evaluating facility pursuant to Code Section 37-3-43, 37-3-63, or subparagraph (a)(3)(B) of Code Section 37-3-81.1 may be detained for a period not to exceed five days, Saturdays, Sundays, and holidays excluded. The patient shall be discharged upon a finding that the patient is not a mentally ill person requiring involuntary treatment or upon a finding and certification that the patient meets all of the outpatient treatment requirements of paragraphs (1) and (2) of subsection (c) of Code Section 37-3-90, in which event a patient meeting those outpatient treatment requirements shall be discharged under the conditions provided in Code Section 37-3-91 but, in any event, upon the expiration of the five-day evaluation period unless:

(1) Within that period:

(A) The patient is admitted as a voluntary patient under Code Section 37-3-20; or

(B) The patient is admitted for involuntary inpatient treatment under Code Section 37-3-81; or

(2) The patient is under criminal charges, notice of which has been given in writing to the facility, in which case the provisions of Code Section 37-3-95 shall apply.

(b) If hospitalization appears desirable, the staff physicians or psychologists of the evaluating facility shall encourage the patient to apply

for voluntary hospitalization unless the attending physician or treating psychologist finds that the patient is unable to understand the nature of voluntary hospitalization, that voluntary hospitalization would be harmful to the patient, or that the patient is determined to be a mentally ill person in need of involuntary treatment, which finding shall be entered in the patient's record.

(c) If, after evaluation of the patient, it is determined by the chief medical officer that proceedings for involuntary treatment of the patient should be initiated pursuant to Code Section 37-3-81 or pursuant to Part 4 of this article, the chief medical officer shall direct that an individualized service plan be developed for that patient during the five-day period that he is detained for evaluation in the facility.

(d) Notice of the discharge shall be given to the patient and his representatives; to the person who filed the petition; if the patient was admitted to the evaluating facility from an emergency receiving facility under Code Section 37-3-43, to the physician or psychologist who executed the certificate or to the court which issued the order pursuant to Code Section 37-3-41; if the patient was under criminal charges of which the facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient; and, if the patient was admitted to the evaluating facility under Code Section 37-3-62, to the court that ordered the evaluation. (Code 1933, §§ 88-505.5, 88-505.6, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1977, p. 1293, § 9; Ga. L. 1978, p. 1789, § 1; Ga. L. 1986, p. 1098, § 3; Ga. L. 1991, p. 1059, § 13; Ga. L. 1992, p. 1902, § 4; Ga. L. 1996, p. 6, § 37; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For comment advocating legislative determination of parental liability for costs of institutional custody of child involuntarily committed to a mental health facility in response to criminal behavior in light of Treglown v. Department of Health & Social Servs., 38 Wis. 2d 317, 156 N.W.2d 363 (1968), see 19 Mercer L. Rev. 457 (1968).

JUDICIAL DECISIONS

Construction. — Former Code 1933, Ch. 49-6 and Ga. L. 1969, p. 505 (see former Ch. 5, T. 29 and O.C.G.A. Ch. 3, T. 37) were meant to be read together for procedural purposes. Kiker v. Kiker, 126 Ga. App. 39, 189 S.E.2d 880 (1972).

Exhaustion of statutory remedies prerequisite before invoking habeas corpus. — When a person has been adjudged insane and committed to an institution, and thereafter seeks to be discharged upon the ground that the person's sanity has been restored, the person cannot invoke the writ of habeas corpus without showing that the person has exhausted specific statutory remedies, when such are provided; however, a party might, perhaps, show some valid reason excusing failure to pursue a statutory remedy, even in a case when ordinarily the party should pursue the remedy. Richardson v. Hall, 199 Ga. 602, 34 S.E.2d 888 (1945).

Continuing presumption of insan-

ity follows prior judicial determination. — When the defendant in a release hearing had been examined three separate times to determine mental competency in relation to a criminal trial, and there had been a judicial determination that the defendant was not mentally responsible for the defendant's crimes and apparently not competent to stand trial, there existed a continuing presumption of insanity at the time of the release hearing. Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979).

When a prior determination based on clear and convincing evidence, as when the trial court had for the court's consideration the evidence of numerous prior committals for psychiatric treatment, evidence that following release from such structured treatment, defendant had suffered decompensation and had often become violent and aggressive toward self or others when not undergoing a regular course of treatment and medication, even though the state did not affirmatively offer it or any additional evidence at the release hearing. Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

RESEARCH REFERENCES

ALR. — When finding or adjudication as to one's mental condition by official or body not clearly judicial is conclusive evidence or effect of a judgment as regards legal mental status, 108 ALR 47.

Test or criterion of mental condition within contemplation of statute providing for commitment of persons because of mental condition, 158 ALR 1220.

May proceedings to have a person declared insane and to appoint a conservator or committee of his person or estate rest upon substituted or constructive service of process, 175 ALR 1324.

Liability of one releasing institutionalized mental patient for harm he causes, 38 ALR3d 699.

Standard of proof required under statute providing for commitment of sexual offenders or sexual psychopaths, 96 ALR3d 840.

37-3-65. Request for transfer to another evaluating facility; recipients of notice of transfer.

Any patient admitted to an evaluating facility may apply to the chief medical officer of that facility for transfer at his own expense to any other approved evaluating facility. If the evaluating facility to which transfer is requested agrees to admit the patient, and if the patient is able to pay for evaluation at such facility, he shall be transferred forthwith. In such case, Code Section 37-3-64 shall apply; and the time periods specified shall be counted from the date of admission to the evaluating facility to which the patient is transferred. Notice of the transfer shall be given to the patient's representatives; to the person who filed the original petition, if any; if the patient was admitted to the evaluating facility from an emergency receiving facility under Code Section 37-3-43, to the physician or psychologist who executed the certificate or to the court which issued the order pursuant to Code Section 37-3-41; if the patient was under criminal charges of which the

facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient; and, if the patient was admitted to the evaluating facility under Code Section 37-3-62, to the court that ordered the evaluation. (Code 1933, § 88-505.7, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1992, p. 1902, § 5; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

PART 3

DETERMINATION OF NEED FOR TREATMENT, ADMISSION TO TREATMENT FACILITIES

37-3-80. Designation of treatment facilities.

Any state owned or state operated facility may be designated by the department as a treatment facility. The department shall maintain a treatment facility at each regional hospital which shall accept patients found in any county in the service region of the hospital. Any other facility within the State of Georgia may be so designated by the department at the request of or with the consent of the governing officers of the facility. (Ga. L. 1958, p. 697, § 5; Ga. L. 1960, p. 837, § 5; Code 1933, § 35-227, enacted by Ga. L. 1963, p. 528, § 1; Code 1933, § 88-505, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-506.2, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-506.1, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1986, p. 1098, § 4.)

JUDICIAL DECISIONS

Cited in Brackett v. State, 227 Ga. 493, 181 S.E.2d 380 (1971); Gibbs v. State, 235 Ga. 480, 220 S.E.2d 254 (1975); Gilbert v. State, 235 Ga. 501, 220 S.E.2d 262 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

37-3-81. Procedure for detention of patient beyond evaluation period; final disposition.

(a) The patient may be detained at a facility beyond the evaluation period unless voluntary hospitalization is sought under subparagraph (a)(1)(A) of Code Section 37-3-64 only upon the recommendation of the chief medical officer of an evaluating facility where the patient has been examined under Part 2 of this article, which recommendation is supported by the opinions of two physicians or a physician and a psychologist who have personally examined the patient within the preceding five days and who agree that the patient is a mentally ill person requiring involuntary treatment but who does not meet the outpatient treatment requirements of paragraphs (1) and (2) of subsection (c) of Code Section 37-3-90. Such recommendation of the chief medical officer and the opinions of the physicians or physician and psychologist shall be entered on a certificate. The certificate shall be filed along with a petition for a hearing in the court of the county in which the patient is being detained for evaluation. Nothing in this chapter shall be construed to prohibit a physician or psychologist or a chief medical officer who has previously executed any other certificate authorized by the provisions of this chapter from executing a certificate provided for in this Code section for the same or any other patient. The certificate and petition shall be filed within five days, Saturdays, Sundays, and holidays excluded, after the patient is admitted to a facility for evaluation under Code Section 37-3-63. Such filing shall authorize detention of the patient by the facility pending completion of a full and fair hearing under this Code section. Copies of the certificate shall be served on the patient and his representatives within five days after the certificate is filed and shall be accompanied by:

(1) A notice that a hearing will be held and the time and place thereof;

(2) A notice that the patient has a right to counsel, that the patient or his representatives may apply immediately to the court to have counsel appointed if the patient cannot afford counsel, and that in such case the court will appoint counsel for the patient unless the patient indicates in writing that he does not desire to be represented by counsel;

(3) A copy of the individualized service plan developed by the facility under this chapter shall be sent to the patient and shall be sent to the patient's representative if requested by such representative. Notice of the right to receive such plan shall be given to the representatives at the time the service plan is sent to the patient;

(4) A notice that the patient has a right to be examined by a physician or psychologist of his own choice at his own expense and to

have that physician or psychologist submit a suggested service plan for the patient which conforms with the requirements of paragraph (9) of Code Section 37-3-1; and

(5) A notice that the patient may waive in writing the hearing described in subsection (c) of this Code section.

(b) If the hearing is waived, the certificate shall serve as authorization for the patient to begin treatment under the terms of the individualized service plan; and the chief medical officer of the facility where the patient is located shall be responsible for the supervision of the service plan.

(c) In any case in which a patient is retained in an evaluating facility pursuant to a petition filed under subsection (a) of this Code section, the court shall hold a full and fair hearing as provided in Code Section 37-3-81.1 unless the hearing is waived in writing by the patient. The hearing shall be held no sooner than seven days and no later than 12 days after the petition is filed with the court. (Ga. L. 1857, p. 123, § 2; Code 1863, §§ 1297, 1298; Code 1868, §§ 1378, 1379; Code 1873, §§ 1357, 1358; Code 1882, §§ 1357, 1358; Civil Code 1895, §§ 1435, 1437; Civil Code 1910, §§ 1601, 1603; Code 1933, §§ 35-228, 35-230; Ga. L. 1958, p. 697, § 12; Ga. L. 1960, p. 837, § 12; Code 1933, § 88-512, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-522, enacted by Ga. L. 1965, p. 490, § 1; Code 1933, §§ 88-506.3, 88-506.4, 88-506.8, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-506.2, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, § 7; Ga. L. 1982, p. 3, § 37; Ga. L. 1982, p. 937, §§ 6, 8; Ga. L. 1983, p. 3, § 28; Ga. L. 1985, p. 1024, § 2; Ga. L. 1986, p. 1098, § 4; Ga. L. 1991, p. 1059, § 14; Ga. L. 1992, p. 1902, § 6; Ga. L. 1996, p. 6, § 37.)

Cross references. — Criminal penalty for malicious confinement of sane person in asylum, § 16-5-43.

Law reviews. — For article comparing hospitalization of mentally ill under former Code 1933, Ch. 49-6, to present procedures under this chapter, see 23 Ga. B.J. 191 (1960). For article discussing the development and practice of committing the mentally ill, see 20 J. of Pub. L. 3 (1971).

JUDICIAL DECISIONS

Determination of mental illness limited and summary proceedings. — Jurisdiction of the ordinary (now probate judge) in issuing a commission to examine a person as to mental illness, competency, or the management of one's estate is limited; the proceedings are summary, and should be strictly construed. Proceedings must show on their face all facts essential to the ordinary's (now probate judge's) jurisdiction and strict compliance with statute. Trapnell v. Smith, 131 Ga. App. 254, 205 S.E.2d 875 (1974).

In finding for the government in an action brought by a wife after her husband shot her rendering her paraplegic, the court concluded that the wife failed to show that the alleged tortfeasor, a licensed social worker, had the requisite control over the husband to give rise to a legal duty as articulated by the Georgia Supreme Court in Bradley Center, Inc. v.

Wessner, 250 Ga. 199 (1982); specifically, the court found that at no time did the husband meet the involuntary commitment standard under O.C.G.A. § 37-3-1(9.1), and that even if the husband had exhibited the statutory conditions for involuntary confinement, the social worker alone could not have had him committed in accordance with O.C.G.A. § 37-3-81. Grijalva v. United States, 289 F. Supp. 2d 1372 (M.D. Ga. 2003).

Facts sufficient to sustain criteria for civil commitment. — When the physician's testimony in a release hearing shows only that the defendant did not engage in aggressive, psychotic behavior and was not mentally ill during the defendant's stay at the hospital while in a structured environment, and in view of defendant's medical history, the history of the defendant's functioning in society, and the history of the case, all of which are facts which the trial court is authorized to consider, the trial court was authorized to find that the criteria for civil commitment have been met. Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979).

Cited in Montgomery v. Gilbert, 112 Ga. App. 751, 146 S.E.2d 115 (1965); Crane v. Crane, 225 Ga. 605, 170 S.E.2d 392 (1969); Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980); Georgia Mental Health Inst. v. Brady, 263 Ga. 591, 436 S.E.2d 219 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Medical admissions county was a county in which the procedure was governed by Ga. L. 1969, p. 505. 1972 Op. Att'y Gen. No. U72-29.

Effect of involuntary commitment. — Involuntary commitment in a state hospital is not tantamount to an adjudication of incompetence and when the superintendent has not imposed any restriction upon the patient, the patient may exercise civil rights including the right to receive funds and property by inheritance without intervention of a guardian. 1962 Op. Att'y Gen. p. 407.

Evidence used to determine whether mentally ill person can afford counsel. — Determination as to whether mentally ill person shall be financially unable to employ counsel to represent the person in a committal hearing would have to be made by the court from evidence obtained from sources other than from the statement of the mentally ill person. 1963-65 Op. Att'y Gen. p. 730.

If court determines that mentally ill person is financially able to employ counsel to represent the person in the committal hearing, then the court should not appoint an attorney to represent that person; if, however, the court determines that the person is financially unable to employ counsel, then the court shall appoint an attorney to represent that person. 1963-65 Op. Att'y Gen. p. 730.

Authority to commit, by implication carries authority to pay transportation cost. — When person committed by judge of probate court to out-of-state psychiatric institution, law authorizing commitment by implication authorizes judge of probate court to arrange for necessary transportation. 1962 Op. Att'y Gen. p. 418.

RESEARCH REFERENCES

ALR. — Test or criterion of mental condition within contemplation of statute providing for commitment of persons because of mental condition, 158 ALR 1220.

Right, without judicial proceeding, to arrest and detain one who is, or is suspected of being, mentally deranged, 92 ALR2d 570.

Standard of proof required under statute providing for commitment of sexual offenders or sexual psychopaths, 96 ALR3d 840.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 ALR3d 780.

37-3-81.1. Disposition of patient upon hearing.

(a) At those hearings required under subsection (c) of Code Section 37-3-81 and subsection (a) of Code Section 37-3-92, the court shall determine whether the patient is a mentally ill person requiring involuntary treatment and, if so, whether the patient is an inpatient or outpatient and, unless otherwise provided in this subsection, the type of involuntary treatment the patient should be ordered to obtain. At such hearing, if the court determines:

(1) That the patient is not a mentally ill person requiring involuntary treatment, the court shall order that the patient be immediately discharged;

(2) That the patient is an outpatient, the court shall further determine, based upon either the individualized service plan required to be prepared under subsection (c) of Code Section 37-3-64 or subsection (b) of Code Section 37-3-91 or the individualized service plan proposed by the physician or psychologist chosen by the patient, whether there is available outpatient treatment for the patient which meets the requirements of the plan chosen by the court and whether the patient will likely obtain that treatment so as to minimize the likelihood of the patient's becoming an inpatient. If the court determines that there is such available outpatient treatment which the patient will likely obtain so as to minimize the likelihood of the patient's becoming an inpatient, then the court shall order the patient to obtain that treatment and shall discharge the patient subject to such order;

(3) That the patient is an outpatient who does not meet the requirements for discharge under paragraph (2) of this subsection and:

(A) The patient has been admitted to either an evaluating or treatment facility and there received an evaluation within 45 days prior to the date of the hearing under this Code section, the court shall order that the patient be discharged; or

(B) The patient has not been admitted to either an evaluating or treatment facility and there received an evaluation within 45 days prior to the date of the hearing under this Code section, the court shall order that the patient be admitted to an evaluating facility, and this chapter shall thereafter apply to that patient as though that patient had been ordered by a court to be admitted to that facility pursuant to Code Section 37-3-62; or

(4) That the patient is an inpatient, the court shall order that the patient shall be transported to a treatment facility where the patient shall be admitted for care and treatment, which order may also

require that a period of such inpatient treatment be followed by available outpatient treatment if there is such outpatient treatment which will meet the requirements of the patient's individualized service plan and the patient will likely obtain the treatment so as to minimize the likelihood of the patient's becoming an inpatient.

(b) If the court at a hearing under subsection (a) of this Code section concludes that the patient is a mentally ill person requiring involuntary treatment, it shall make findings of fact and conclusions of law in support of that conclusion as part of its final order.

(c) The court may order the hospitalization of any patient pursuant to paragraph (4) of subsection (a) of this Code section for any period not to exceed six months, subject to the power of the chief medical officer to discharge the patient under subsection (b) of Code Section 37-3-85. If continued hospitalization is necessary at the end of that period, the chief medical officer shall apply for an order authorizing such continued hospitalization under Code Section 37-3-83.

(d) The court may order the patient to obtain available outpatient treatment under the additional conditions specified in Code Sections 37-3-93 and 37-3-94. (Code 1981, § 37-3-81.1, enacted by Ga. L. 1986, p. 1098, § 4; Ga. L. 1987, p. 3, § 37; Ga. L. 1987, p. 797, § 1; Ga. L. 1991, p. 1059, § 15.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "Sections" was substituted for "Section" in subsection (d).

Pursuant to Code Section 28-9-3, in 1987, the amendment of subparagraph (a)(3)(A) of this Code section by Ga. L. 1987, p. 3, § 27, was treated as impliedly repealed and superseded by Ga. L. 1987, p. 797, § 5, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Law reviews. — For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Mental health facility has no right to detain patient pending appeal from discharge order. — Mental health facility did not have the right to appeal from an adverse involuntary commitment decision and the facility did not have statutory authority, nor would it have been constitutional, to detain the patient pending appeal of a probate court order of discharge. Georgia Mental Health Inst. v. Brady, 263 Ga. 591, 436 S.E.2d 219 (1993).

Cited in Bruscato v. Gwinnett-Rockdale-Newton Cmty. Serv. Bd., 290 Ga. App. 638, 660 S.E.2d 440 (2008).

37-3-82. Procedure upon failure of or noncompliance with involuntary outpatient treatment plan.

(a) If at any time during a period of involuntary outpatient treatment, including but not limited to interim outpatient treatment ar-

ranged pursuant to subsection (b) of Code Section 37-3-91, the physician or psychologist in charge of the patient's outpatient service plan determines that, because of a change in the patient's condition, the least restrictive alternative which would accomplish the treatment goals is hospitalization of the patient, then that physician or psychologist may execute a certificate under the conditions specified in subsection (a) of Code Section 37-3-41. That certificate shall have the same duration and effect as a certificate issued pursuant to subsection (a) of Code Section 37-3-41.

(b) If at any time during a period of involuntary outpatient treatment, including but not limited to interim outpatient treatment arranged pursuant to subsection (b) of Code Section 37-3-91, the patient fails without good cause or refuses to comply with the outpatient service plan, the physician or psychologist in charge of the outpatient service plan or that physician's or psychologist's designee may petition the court originally approving the involuntary treatment of the patient or the court of the county in which the patient is a resident or where the patient may be found for an order authorizing a peace officer to take the patient and immediately deliver the patient to the community mental health center in charge of the patient's outpatient service plan, if a physician or psychologist is available there to examine the patient, or to the nearest emergency receiving facility serving the county in which the patient is found. If in the discretion of the court such an order is issued, the patient shall be delivered to the facility and may be given such emergency or other medical treatment as is indicated by good medical practice. The patient must be released from the custody of the community mental health center within four hours and from the custody of the emergency receiving facility within 48 hours after being taken into the custody of that center or facility unless the examining physician or psychologist concludes that, because of a change in the patient's condition, the least restrictive alternative which would accomplish the treatment goals is hospitalization of the patient. The physician or a psychologist may then execute a certificate under the conditions specified therefor in subsection (a) of Code Section 37-3-41, if the examination is done in a community mental health center, or under the conditions specified therefor in Code Section 37-3-43, if the examination is done in an emergency receiving facility. That certificate shall have the same duration and effect as a certificate issued pursuant to subsection (a) of Code Section 37-3-41 or Code Section 37-3-43, as applicable.

(c) With regard to a patient required to obtain involuntary outpatient treatment, the court may issue any order authorized under subsection (b) of Code Section 37-3-41, but if the court knows that patient is required to obtain involuntary outpatient treatment, that court may issue such order only upon the court's determination, in

addition to any other conditions for the issuance of that order, that such patient has not complied with the involuntary outpatient treatment or that the patient reasonably appears to be an inpatient.

(d) Any patient detained in a facility pursuant to this Code section shall not be required during that period of detention to obtain outpatient treatment required by any order which is then in effect and which was issued pursuant to this chapter. That order shall otherwise remain in full force and effect notwithstanding the patient's detention in or release from the facility unless that facility obtains a court order authorized by Code Section 37-3-81.1 which expressly supersedes the prior order. (Code 1933, § 88-506.3, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1981, p. 787, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1985, p. 1024, § 3; Ga. L. 1986, p. 1098, § 4; Ga. L. 1987, p. 797, § 2; Ga. L. 1991, p. 1059, § 16; Ga. L. 1992, p. 1902, § 7.)

Law reviews. — For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Cited in Bruscato v. Gwinnett-Rockdale-Newton Cmty. Serv. Bd., 290 Ga. App. 638, 660 S.E.2d 440 (2008).

37-3-83. Procedure for continued involuntary hospitalization.

(a) If it is necessary to continue involuntary treatment of a hospitalized patient beyond the end of the period during which the treatment facility is currently authorized under this chapter to retain the patient, the chief medical officer prior to the expiration of the period shall seek an order authorizing such continued treatment in the manner provided in this Code section. The chief medical officer may seek such an order authorizing continued involuntary treatment involving inpatient treatment, outpatient treatment, or both under the procedures of this Code section and Code Section 37-3-93.

(b) If the chief medical officer finds that continued involuntary treatment is necessary (1) for an individual who was admitted while serving a criminal sentence but whose sentence is about to expire or (2) for an individual who was hospitalized while under the jurisdiction of a juvenile court but who is about to reach the age of 17, the chief medical officer shall seek an order authorizing such continued treatment in the manner provided in this Code section; and this chapter shall apply fully to such a patient after that time.

(c) A Committee for Continued Involuntary Treatment Review shall be established by the chief medical officer of each hospital and shall

consist of not less than five persons of professional status, at least one of whom shall be a physician and at least two others of whom shall be either physicians or psychologists. The committee may conduct its meetings with a quorum of any three members at least one of whom shall be a physician. The function of this committee shall be to review and evaluate the updated individualized service plan of each patient of the hospital and to report to the chief medical officer its recommendations concerning the patient's need for continued involuntary treatment. No person who has responsibility for the care and treatment of the individual patient for whom continued involuntary treatment is requested shall serve on any committee which reviews such individual's case.

(d) If the chief medical officer desires to seek an order under this Code section authorizing continued involuntary treatment for up to 12 months beyond the expiration of the currently authorized period of hospitalization, he shall first file a notice of such intended action with the Committee for Continued Involuntary Treatment Review, which notice shall be forwarded to the committee at least 60 days prior to the expiration of that period.

(e) Within ten days of the date of the notice, the committee shall meet to consider the matter of the chief medical officer's intention to seek an order for continued involuntary treatment. Prior to the committee's meeting, the patient and his representatives shall be notified of the following: the purpose of such meeting, the time and place of such meeting, their right to be present at such meeting, and their right to present any alternative individualized service plan secured at their expense. In those cases in which the patient will not or cannot appear, at least one member of the committee will make all reasonable efforts to interview the patient and report to the committee. The physician or psychologist proposing the treatment plan shall present an updated individualized service plan for the patient to the committee. The committee shall report to the chief medical officer or his designee, other than the physician or psychologist proposing the treatment plan or a member of the committee, its written recommendations along with any minority recommendations which may also be submitted. Such report will specify whether or not the patient is a mentally ill person requiring involuntary treatment and whether continued hospitalization is the least restrictive alternative available.

(f) If, after considering the committee's recommendations and minority recommendations, if any, the chief medical officer or his designee, other than the attending physician or a member of the committee, determines that the patient is not a mentally ill person requiring involuntary treatment, the patient shall be immediately discharged from involuntary hospitalization pursuant to subsection (b) of Code Section 37-3-85.

(g) If, after considering the committee's recommendations and minority recommendations, if any, the chief medical officer or his designee, other than the attending physician or member of the committee, determines that the patient is a mentally ill person requiring involuntary treatment, he shall, within ten days after receiving the committee's recommendations, serve a petition for an order authorizing continued involuntary treatment along with copies of the updated individualized service plan and the committee's report on the designated office within the department and shall also serve such petition along with a copy of the updated individualized service plan on the patient. A copy of the petition shall be served on the patient's representatives. The petition shall contain a plain and simple statement that the patient or his representatives may file a request for a hearing with a hearing examiner appointed pursuant to Code Section 37-3-84 within 15 days after service of the petition, that the patient has a right to counsel at the hearing, that the patient or his representatives may apply immediately to the court to have counsel appointed if the patient cannot afford counsel, and that the court will appoint counsel for the patient unless the patient indicates in writing that he does not desire to be represented by counsel or has made his own arrangements for counsel.

(h) If a hearing is not requested by the patient or the representatives within 15 days of service of the petition on the patient and his representatives, the hearing examiner shall make an independent review of the committee's report, the updated individualized service plan, and the petition. If he concludes that continued involuntary treatment may not be necessary or if he finds any member of the committee so concluded, then he shall order that a hearing be held pursuant to subsection (i) of this Code section. If he concludes that continued involuntary treatment is necessary, then he shall order continued involuntary treatment involving inpatient treatment, outpatient treatment, or both for a period not to exceed one year.

(i) If a hearing is requested within 15 days of service of the petition on the patient and his representatives or if the hearing examiner orders a hearing pursuant to subsection (h) or (j) of this Code section, the hearing examiner shall set a time and place for the hearing to be held within 25 days of the time the hearing examiner receives the request but in any event no later than the day on which the current order of involuntary inpatient treatment expires. Notice of the hearing shall be served on the patient, his representatives, the facility, and, when appropriate, on counsel for the patient. The hearing examiner, within his discretion, may grant a change of venue for the convenience of parties or witnesses. Such hearing shall be a full and fair hearing, except that the patient's attorney, when the patient is unable to attend the hearing and is incapable of consenting to a waiver of his appearance, may move that the patient not be required to appear; however, the

record shall reflect the reasons for the hearing examiner's actions. After such hearing, the hearing examiner may issue any order which the court is authorized to issue under Code Section 37-3-81.1 and subject to the limitations of that Code Section 37-3-81.1, provided that a patient who is an outpatient who does not meet the requirements for discharge under paragraph (2) of subsection (a) of Code Section 37-3-81.1 shall nevertheless be discharged and provided that the hearing examiner may order the patient's continued inpatient treatment, outpatient treatment, or both for a period not to exceed one year, subject to the power to discharge the patient under subsection (b) of Code Section 37-3-85 or under Code Section 37-3-94. In the event that an order approving continued hospitalization is entered for an individual who was admitted while serving a criminal sentence under the jurisdiction of the Department of Corrections, but whose sentence is about to expire, the chief medical officer shall serve a copy of that order upon the Department of Corrections within five working days of the issuance of the order.

(j) The hearing examiner for a patient who was admitted under the jurisdiction of the juvenile court and who reaches the age of 17 without having had a full and fair hearing pursuant to any provisions of this chapter or without having waived such hearing shall order that a hearing be held pursuant to subsection (i) of this Code section. (Code 1933, § 88-506.6, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-506.5, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, § 9; Ga. L. 1986, p. 1098, § 4; Ga. L. 1991, p. 1059, § 17.)

Cross references. — Criminal penalty for malicious confinement of sane person in asylum, § 16-5-43.

Law reviews. — For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982).

JUDICIAL DECISIONS

Cited in Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980); Benham v. Edwards, 501 F. Supp. 1050 (N.D. Ga. 1980); Bruscato v. Gwinnett-Rockdale-Newton Cmty. Serv. Bd., 290 Ga. App. 638, 660 S.E.2d 440 (2008).

37-3-84. Appointment of hearing examiners for hearings as to continued hospitalization; powers of hearing examiners generally; issuance of subpoenas.

(a) One or more hearing examiners shall be appointed by the Justices of the Supreme Court to hold the hearings under Code Section 37-3-83. Such hearing examiners shall be members of the State Bar of Georgia and shall be compensated by the department.

(b) The hearing examiners shall have the authority to:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas;

(3) Rule upon offers of proof;

(4) Regulate the course of the hearing;

(5) Provide for the taking of testimony by deposition;

(6) Reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the hearing examiner; and

(7) Make all appropriate orders authorized by this chapter.

(c) If a subpoena issued by the hearing examiner is disobeyed, the hearing examiner may apply to the superior court of the county in which the hearing is held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.

(d) In the event a patient desires counsel in a hearing before the hearing examiner but cannot afford such counsel, the hearing examiner shall apply to the court of the county in which the hearing is held and that court shall appoint counsel for the patient. Payment for such representation shall be made by the county of the patient's legal residence. (Code 1933, § 88-506.5, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-506.4, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, § 8; Ga. L. 1986, p. 1098, § 4.)

JUDICIAL DECISIONS

Cited in Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980).

OPINIONS OF THE ATTORNEY GENERAL

In proceedings for sterilization of mental incompetent, the incompetent has right to counsel; if indigent, the incompetent has a right to appointed counsel. 1971 Op. Att'y Gen. No. U71-29.

RESEARCH REFERENCES

ALR. — Right to notice and hearing prior to revocation of conditional release status of mental patient, 29 ALR4th 394.

37-3-85. Periodic review of individualized service plan; procedure upon end of need for involuntary treatment; designation of discharge decision maker; notice of discharge or transfer to voluntary status.

(a) Each individualized service plan for a patient receiving involuntary inpatient treatment shall be reviewed at regular intervals to determine the patient's progress toward the stated goals and objectives of the plan and to determine whether the plan should be modified because of the patient's present condition. These reviews should be based upon relevant progress notes in the patient's clinical record and upon other related information; and input from the patient should be obtained and utilized where feasible.

(b) Any time a patient receiving involuntary inpatient treatment is found by the chief medical officer, after consideration of the recommendations of the treatment team, no longer to be a mentally ill person requiring involuntary inpatient treatment, the chief medical officer may:

(1) Discharge the patient from involuntary outpatient or inpatient treatment, or both, subject to the conditions of Code Section 37-3-95;

(2) Discharge the patient from involuntary inpatient treatment and require that the patient obtain available outpatient treatment for the remaining period the patient was to have been required to obtain inpatient treatment, as long as the patient then meets the standards for being discharged to outpatient treatment under paragraph (2) of subsection (a) of Code Section 37-3-81.1 and subject to the conditions of Code Section 37-3-95; or

(3) Transfer the patient to voluntary status at the patient's request, as provided in Code Section 37-3-24.

(c) The chief medical officer may designate in writing another physician, who may be the attending physician, to make these discharge decisions. If the decision of the designee is contrary to the recommendations of the treatment team, the issue must go to the chief medical officer for final determination. Where the treatment team and the designee concur, the decision of the designee will be final.

(d) Notice of the discharge or the transfer of status shall be given to the patient and his representatives; if the patient's hospitalization was authorized by order of a court, to the court which entered such order; and, if the patient was under criminal charges of which the facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient. (Ga. L. 1874, p. 91, § 1; Code 1882, § 1344a; Ga. L. 1884-85, p. 61, § 1; Civil Code 1895, § 1416; Civil Code 1910, § 1578; Ga. L. 1931,

p. 7, § 41; Code 1933, § 35-206; Ga. L. 1953, Nov.-Dec. Sess., p. 308, §§ 1, 2; Ga. L. 1958, p. 697, § 11; Ga. L. 1960, p. 837, § 11; Code 1933, § 88-511, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-506.7, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1977, p. 1293, § 10; Code 1933, § 88-506.6, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1986, p. 1098, § 4; Ga. L. 1991, p. 1059, § 3; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Determination that a patient met former Code 1933, § 88-506.2 (see O.C.G.A. § 37-3-80) criteria was not an adjudication that the patient was mentally competent at the time of the trial of understanding the nature and object of the proceedings going on against the patient, and rightly comprehends the patient's own condition in reference to such proceedings, and is capable of rendering the patient's attorneys such assistance as a proper defense to the indictment preferred against the patient demands. Rather, one who was previously adjudicated incompetent to stand trial, is entitled to have the issue of present competency determined prior to standing trial. Gibbs v. State, 235 Ga. 480, 220 S.E.2d 254 (1975), cert. denied, 424 U.S. 924, 96 S. Ct. 1134, 47 L. Ed. 2d 333 (1976).

Presumption of sanity raised by administrative release. — Assuming that previous commitment as "a mentally ill person and in need of hospitalization in a psychiatric hospital" raised a counter presumption to the rebuttable presumption of "sound mind and discretion," the administrative release from hospitalization cancelled any previously existing presumption of insanity, leaving a presumption of sanity, which was rebuttable. Hodges v. State, 257 Ga. 818, 364 S.E.2d 275 (1988).

Cited in Brackett v. State, 227 Ga. 493, 181 S.E.2d 380 (1971); Gilbert v. State, 235 Ga. 501, 220 S.E.2d 262 (1975); Graham v. State, 236 Ga. 378, 223 S.E.2d 803 (1976).

RESEARCH REFERENCES

ALR. — Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 ALR4th 563.

Right to notice and hearing prior to revocation of conditional release status of mental patient, 29 ALR4th 394.

Part 4

Involuntary Outpatient Care

37-3-90. Physician's or psychologist's determination and certification as to necessity of involuntary care; treatment of patient as inpatient or outpatient; minors.

(a) When a physician or psychologist at a facility or on behalf of a facility determines and certifies under this article that there is reason

to believe a patient admitted to or examined at the facility is a mentally ill person requiring involuntary treatment, that physician or psychologist shall further determine and certify whether there is reason to believe the patient is:

(1) An inpatient or outpatient; and

(2) If an outpatient, whether there is available outpatient treatment.

(b) Unless otherwise specifically provided, the determination and certification as to paragraphs (1) and (2) of subsection (a) of this Code section shall be made within the time period required for determining whether a patient is a mentally ill person requiring involuntary treatment, except that if such determination is made by a physician or psychologist at or on behalf of a community mental health center, the determination and certification shall be made within four hours after the patient is examined by the physician or psychologist.

(c) A person determined and certified to be:

(1) An outpatient; and

(2) A person for whom there is available outpatient treatment

shall be considered to be in need of involuntary outpatient treatment and not involuntary inpatient treatment for purposes of further proceedings under this article until such time as that person's status is determined to be otherwise pursuant to those proceedings.

(d) A person determined and certified to be a mentally ill person requiring involuntary treatment who does not meet all of the requirements of paragraphs (1) and (2) of subsection (c) of this Code section shall be considered to be in need of involuntary inpatient treatment and not involuntary outpatient treatment for purposes of further proceedings under this article until such time as that person's status is determined to be otherwise pursuant to those proceedings.

(e) Any minor admitted voluntarily shall be released at any time after written request is made by the minor's parent or legal guardian. (Code 1981, § 37-3-90, enacted by Ga. L. 1986, p. 1098, § 5; Ga. L. 1992, p. 1902, § 8; Ga. L. 1995, p. 612, § 1.)

Law reviews. — For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 258 (1995).

For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Cited in Bruscato v. Gwinnett-Rockdale-Newton Cmty. Serv. Bd., 290 Ga. App. 638, 660 S.E.2d 440 (2008).

37-3-91. Discharge of persons meeting outpatient care criteria.

(a) A person who is in the physical custody of a community mental health center, emergency receiving facility, or evaluating facility and who is determined by a physician or a psychologist, at or on behalf of that facility, to meet all of the outpatient treatment requirements of paragraphs (1) and (2) of subsection (c) of Code Section 37-3-90 shall be discharged from that facility as provided in this Code section pending a full and fair hearing or waiver thereof under Code Section 37-3-92. That discharge from a community mental health center shall occur within four hours after the patient is examined by a physician or a psychologist at or on behalf of that center. That discharge from an emergency receiving facility shall occur within 48 hours after the patient's admission thereto. That discharge from an evaluating facility shall occur no later than the expiration of the five-day evaluation period established under Code Section 37-3-64.

(b) Prior to a psychologist's discharging the patient under subsection (a) of this Code section, the treating psychologist shall obtain the concurrence of a physician. In addition, within the time period the facility is authorized to retain the patient, the facility at which or on behalf of which the patient was examined, which facility shall be the "referring facility" for purposes of this part, shall prepare an individualized service plan for the patient. This plan shall be prepared in consultation with the facility at which available outpatient treatment is to be provided the patient, which facility shall be the "receiving facility" for purposes of this part. The referring facility shall also make arrangements with the receiving facility to provide interim outpatient treatment, in accordance with the individualized service plan, to the patient pending the full and fair hearing or waiver thereof. Nothing in this Code section shall prevent a referring facility for a patient from also being the receiving facility for that patient.

(c) A patient for whom interim outpatient treatment is arranged pursuant to subsection (b) of this Code section shall obtain that treatment or be subject to the provisions of Code Section 37-3-82. Written notice of the time, date, place, and address for that interim outpatient treatment shall be provided the patient prior to the patient's discharge, along with written notification that if the patient does not comply with the interim outpatient treatment or attend or waive a hearing, the time and date of which hearing will later be provided the patient, the patient may be involuntarily admitted for examination, treatment, or both. Notice of the discharge shall be provided to persons other than the patient in the same manner and under the same conditions as required by subsection (c) of Code Section 37-3-43 and subsection (d) of Code Section 37-3-64, and that notice shall also include a notice regarding the interim outpatient treatment and the conse-

quences if the patient does not obtain the treatment or attend or waive the hearing.

(d) Within three days after a referring facility has discharged a patient pursuant to subsection (a) of this Code section, that facility shall transmit to the receiving facility a copy of the referring facility's examination report, individualized service plan, and such other necessary clinical information the referring facility may have regarding the patient. Within five days after receiving such report, plan, and information, the receiving facility shall petition the court of the county in which the patient is located for a full and fair hearing pursuant to Code Section 37-3-92 and include with the petition a copy of the examination report, the individualized service plan, and the address to which the patient was discharged by the referring facility.

(e) Notwithstanding the provisions of subsection (a) of this Code section, a patient detained in a treatment facility pursuant to a certificate and petition under Code Section 37-3-81, whether or not that patient is subsequently determined by that facility during the time of such detention to meet all of the outpatient treatment requirements of paragraphs (1) and (2) of subsection (c) of Code Section 37-3-90, may not be discharged from that facility until a full and fair hearing is held pursuant to Code Section 37-3-81.1, which hearing may not be waived by any patient so determined to meet all of such outpatient treatment requirements. (Code 1981, § 37-3-91, enacted by Ga. L. 1986, p. 1098, § 5; Ga. L. 1987, p. 797, §§ 3, 4; Ga. L. 1992, p. 1902, § 9; Ga. L. 1996, p. 6, § 37.)

37-3-92. Hearing; notice; waiver of hearing; apprehension and detention of patient failing to appear; treatment upon waiver.

(a) Except when a hearing is waived as provided in this subsection, within 30 days after the filing of the petition under subsection (d) of Code Section 37-3-91, the court shall hold a full and fair hearing. At least ten days prior to that hearing, the court shall have served on the patient and the patient's representatives the same notices and information required by paragraphs (1) through (4) of subsection (a) of Code Section 37-3-81, as well as a notice that the patient may waive in writing the hearing but if the patient does not either attend or waive the hearing the court may order the patient to be taken into custody, hospitalized, evaluated, and treated. The patient and representatives shall have the rights specified in those notices. Hearings held pursuant to this subsection shall be held as provided in Code Section 37-3-81.1, and the court holding the hearing may issue any order authorized by and subject to the limitations of that Code Section 37-3-81.1.

(b) If the patient is notified of the hearing as required under subsection (a) of this Code section and does not appear at or waive that

hearing, absent a showing of good cause for not appearing, the court may issue an order commanding any peace officer to take such person into custody and deliver that person to an emergency receiving facility or the referring facility if there is a physician or psychologist available there, and this chapter shall thereafter apply to that patient as though the patient had been admitted to that facility pursuant to subsection (b) of Code Section 37-3-41.

(c) If the hearing is waived as provided in subsection (a) of this Code section, that hearing shall not be held but the court shall order the patient to obtain available outpatient treatment under the individualized service plan submitted with the petition for hearing. (Code 1981, § 37-3-92, enacted by Ga. L. 1986, p. 1098, § 5; Ga. L. 1992, p. 1902, § 10.)

37-3-93. Court order for outpatient treatment; physician's or psychologist's petition to extend order; review of petition; hearing on extension petition; patients under juvenile court jurisdiction.

(a) Pursuant to Code Section 37-3-81.1 or Code Section 37-3-92, the court may order the patient to obtain available outpatient treatment for any period not to exceed one year, but the total period of involuntary treatment required by such order, including inpatient treatment within the limitations of Code Section 37-3-81.1, shall not exceed one year.

(b) If it is necessary to continue available outpatient treatment beyond the period authorized pursuant to subsection (a) of this Code section, at least 60 days prior to the expiration of that period the physician or psychologist responsible for that treatment or the person responsible for the patient's treatment under the direction and with approval of the physician or psychologist shall:

(1) Update the patient's individualized service plan;

(2) Prepare a report containing evidence that the patient meets all the requirements for available outpatient treatment under paragraphs (1) and (2) of subsection (c) of Code Section 37-3-90; and

(3) Petition the hearing examiners appointed to hold hearings under Code Section 37-3-83 for an order requiring the patient to obtain available outpatient treatment beyond the period previously ordered for the patient.

The petition shall contain a plain and simple statement that the patient or the patient's representatives may file a request for a hearing with a hearing examiner appointed to hold hearings pursuant to Code Section 37-3-83 within 15 days after service of the petition, that the patient has a right to counsel at the hearing, that the patient or the patient's

representatives may apply immediately to the court to have counsel appointed if the patient cannot afford counsel, and that the court will appoint counsel for the patient unless the patient indicates in writing that the patient does not desire to be represented by counsel or has made the patient's own arrangements for counsel.

(c) If a hearing is not requested by the patient or the representatives within 15 days of service of the petition on the patient and the patient's representatives, the hearing examiner shall make an independent review of the report, the updated individualized service plan, and the petition. If the hearing examiner concludes from that review that the patient is no longer a mentally ill person requiring involuntary treatment, then that hearing examiner shall order that a hearing be held pursuant to subsection (d) of this Code section. If the hearing examiner concludes that the patient meets all the requirements for available outpatient treatment under paragraphs (1) and (2) of subsection (c) of Code Section 37-3-90, then the hearing examiner shall order continued outpatient treatment for a period not to exceed one year.

(d) If the hearing examiner orders a hearing pursuant to subsection (c) or (e) of this Code section or if a hearing is requested within 15 days of service of the petition on the patient and the patient's representatives, the hearing examiner shall set a time and place for the hearing to be held within 25 days of the time the hearing examiner receives the request but in any event no later than the day on which the current order of involuntary outpatient treatment expires. Notice of the hearing shall be served on the patient, the patient's representatives, the facility providing outpatient treatment for the patient, and, when appropriate, on counsel for the patient. The hearing examiner, within that person's discretion, may grant a change of venue for the convenience of parties or witnesses. Such hearing shall be a full and fair hearing. After such hearing, the hearing examiner may issue any order which the court is authorized to issue under paragraphs (1), (2), and (3) of subsection (a) of Code Section 37-3-81.1 and subject to the limitations of that Code section. If the patient does not appear at the hearing, absent a showing of good cause, the hearing examiner may issue any order the court is authorized to issue under subsection (b) of Code Section 37-3-92.

(e) The hearing examiner for a patient who is ordered to obtain available outpatient treatment, who is under the jurisdiction of the juvenile court, and who reaches the age of 17 without having had a full and fair hearing pursuant to any provisions of this article or without having waived such hearing shall order that a hearing be held pursuant to subsection (d) of this Code section. (Code 1981, § 37-3-93, enacted by Ga. L. 1986, p. 1098, § 5; Ga. L. 1991, p. 1059, § 18; Ga. L. 1992, p. 1902, § 11; Ga. L. 1996, p. 6, § 37.)

Law reviews. — For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

37-3-94. Reviews of individual service plans; discharge of patients from treatment; notice of discharge.

(a) Each individualized service plan for available outpatient treatment shall be reviewed at regular intervals to determine the patient's progress toward the stated goals and objectives of the plan and to determine whether the plan should be modified because of the patient's present condition. These reviews should be based upon relevant progress notes in the patient's clinical record and upon other related information; and input from the patient should be obtained and utilized where feasible.

(b) Any time a patient is found by the physician or psychologist in charge of the patient's outpatient treatment no longer to be a mentally ill person requiring involuntary treatment, that physician or psychologist shall discharge the patient from further compliance with the treatment.

(c) Notice of the discharge under subsection (b) of this Code section shall be given to the patient and his representatives; to the court which originally ordered such involuntary treatment; and, if the patient was under criminal charges of which the facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient. (Code 1981, § 37-3-94, enacted by Ga. L. 1986, p. 1098, § 5; Ga. L. 1991, p. 1059, § 19; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

37-3-95. Discharge of patients under criminal charges.

Notwithstanding any other provisions of any part of this article, a patient under criminal charges, notice of which has been given in writing to the facility, may only be discharged from the physical custody of a facility if the facility, by certified mail or statutory overnight delivery, provides written notification of the proposed discharge to the law enforcement agency originally having custody of the patient and the patient is discharged into the physical custody of a peace officer from that agency. That agency shall be required to assume such physical custody within five days after receipt in writing of the notification of proposed discharge. (Code 1981, § 37-3-95, enacted by Ga. L. 1986, p. 1098, § 5; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

ARTICLE 4

PLACEMENT, TRANSFER, AND TRANSPORTATION OF PATIENTS GENERALLY

37-3-100. Placement and transfer of patients generally.

(a) The department may designate the state owned or state operated facility to which a patient is to be admitted under this chapter. The department may instead designate a private facility, approved under Code Section 37-3-6, to which the patient is to be admitted, if the department has obtained the prior agreement of the private facility and of the patient or his representatives.

(b) A patient hospitalized in a state owned or state operated facility under this chapter may apply for transfer at his own expense to a private facility approved under Code Section 37-3-6 if he is able to pay for treatment at such private facility. If the private facility agrees to accept the patient, the department shall transfer the patient to that facility.

(c) If a private facility requests the department to take custody of a patient who has been hospitalized therein under this chapter and if the patient meets the criteria for admission under this chapter, then the department shall accept the patient and designate the state owned or state operated facility to which the patient shall be admitted.

(d) When the needs of the patient or efficient utilization of any facility so requires, a patient may be transferred from one facility to another. At the time of any such transfer, notice shall be given in writing to the patient and to his representatives and the patient shall be advised in writing of the reasons for his transfer. A voluntary patient may be transferred only with his consent.

(e) A patient hospitalized in a private facility, approved under Code Section 37-3-6, or that patient's representative may request that facility to transfer the patient to a state owned or operated facility. That private facility shall then request the department to take custody of the patient. If the patient meets the criteria for admission under this chapter, then the private facility shall transfer the patient and the department shall accept the patient and designate the state owned or operated facility to which the patient shall be admitted. (Ga. L. 1958, p. 697, § 10; Ga. L. 1960, p. 837, § 10; Code 1933, § 88-510, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, §§ 88-502.13, 88-508.6, enacted by

Ga. L. 1969, p. 505, § 1; Code 1933, §§ 88-507.5, 88-502.16, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1985, p. 873, § 1.)

37-3-101. Transportation of patients generally.

(a) The governing authority of the county where the patient is found or located shall arrange for initial emergency transport of a patient to an emergency receiving facility. Except as otherwise authorized under subsection (b) of this Code section, the governing authority of the county of the patient's residence shall arrange for all required transportation for mental health purposes subsequent to the initial transport. The type of vehicle employed shall be in the discretion of the governing authority of the county, provided that, whenever possible, marked vehicles normally used for the transportation of criminals or those accused of crimes shall not be used for the transportation of patients. The court shall, upon the request of the community mental health center, order the sheriff to transport the patient in such manner as the patient's condition demands. At any time the community mental health center is satisfied that the patient can be transported safely by family members or friends, such private transportation shall be encouraged and authorized. In nonemergency situations, no female patient shall be transported at any time without another female in attendance who is not a patient, unless such female patient is accompanied by her husband, father, adult brother, or adult son.

(b) Notwithstanding the provisions of subsection (a) of this Code section, when a patient is under the care of a facility, the facility shall have the discretion to determine the type of vehicle to safely transport the patient and to arrange for such transportation without the need to obtain the prior approval of the governing authority of the county of the patient's residence, the court, or the community mental health center. This subsection shall not prevent the facility from requesting and receiving transportation services from the governing authority of the county of the patient's residence and shall not relieve the county sheriff of the duty of providing transportation. Persons providing transportation are authorized to transport a patient from a sending facility to a receiving facility but shall not release the patient under any circumstances except into the custody of the receiving facility. The use of physical restraints to ensure the safe transport of the patient shall comply with the requirements of Code Section 37-3-165. When transportation is not provided by the county sheriff, the expense of such transportation shall not be billed to the county governing authority but may be billed to the patient and, unless agreed to in writing by the facility, shall not be billed to or considered an obligation of the facility. (Ga. L. 1958, p. 697, § 8; Ga. L. 1960, p. 837, § 8; Code 1933, § 88-508, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.14, enacted by

Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.17, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1993, p. 1445, § 17.3; Ga. L. 2002, p. 1067, § 1.)

Cross references. — Manner of marking of law enforcement and emergency vehicles, § 40-8-90 et seq.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Sheriff must transport mental patients to hospitals in accordance with terms of the transportation order; the terms of such order depend upon the determinations of the county health department and county governing authority. 1969 Op. Att'y Gen. No. 69-412.

37-3-102. Transfer of patients to custody of federal agencies for diagnosis, care, or treatment; retention of jurisdiction by Georgia courts; jurisdiction in federal hospitals and institutions located in Georgia.

(a) If a patient ordered to be hospitalized pursuant to this chapter is eligible for hospital care or treatment by the United States Department of Veterans Affairs or any other federal agency, the department shall transfer the patient to the custody of the nearest such agency with available bed space for diagnosis, care, or treatment. When any such patient is admitted under this Code section to any such hospital or institution within or outside the state, he shall be subject to the rules and regulations of such agency. Upon notification from the superintendent or the chief medical officer of the United States Department of Veterans Affairs Medical Center for those patients therein who may require involuntary treatment pursuant to this chapter, the patient will be evaluated, while remaining in the physical custody of the United States Department of Veterans Affairs Medical Center, by the nearest emergency receiving facility. The superintendent and chief medical officer of any hospital or institution operated by such agency in which

the individual is so hospitalized shall, with respect to such individual, be vested with the same powers and duties as the superintendent and chief medical officer of facilities within this state with respect to all matters under this chapter. Jurisdiction is retained in the appropriate courts of this state at any time to inquire into the mental condition of an individual so hospitalized to determine the necessity for continuance of his hospitalization and to order his release; and every transfer of a patient by the department pursuant to this Code section is so conditioned.

(b) An order of a court of competent jurisdiction of another state, territory, or possession or of the District of Columbia authorizing hospitalization of a patient by any agency of the United States shall have the same force and effect as to the patient while in this state as in the jurisdiction in which is situated the court entering the order; and the courts of the state, territory, possession, or district issuing such order shall be deemed to have retained jurisdiction of the patient so hospitalized for the purpose of inquiring into his mental condition and determining the necessity for continuance of his hospitalization, as is provided in subsection (a) of this Code section with respect to patients ordered hospitalized by the courts of this state. Consent is given for the application of the law of the state, territory, possession, or district in which is located the court issuing the order for hospitalization with respect to the authority of the chief medical officer of any hospital or institution operated in this state by the United States Department of Veterans Affairs or any other federal agency to retain custody, transfer, furlough, or discharge the patient therein hospitalized. (Ga. L. 1958, p. 697, §§ 7, 10; Ga. L. 1960, p. 837, §§ 7, 10; Code 1933, §§ 88-507, 88-510, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-508.5, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-507.4, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1984, p. 756, § 1; Ga. L. 1990, p. 45, § 1.)

RESEARCH REFERENCES

ALR. — Standard of proof required under statute providing for commitment of sexual offenders or sexual psychopaths, 96 ALR3d 840.

37-3-103. Procedure for transfer of Georgia residents from out-of-state hospitals to Georgia hospitals.

Upon application to the department by a parent, spouse, next of kin, or guardian or by an agency of another state in which the patient is hospitalized, a patient shall be eligible to be hospitalized in the State of Georgia if found by the department to be a legal resident of this state. The department shall designate a hospital to which such patient is to be transported at no expense to the State of Georgia. The regional state

hospital administrator of such hospital and the next of kin or guardian of the patient shall be notified of this action. The chief medical officer shall be authorized to hospitalize the patient for a period not to exceed five days unless prior to the expiration of such period the patient shall have voluntarily agreed to hospitalization or involuntary proceedings shall have been instituted under this chapter. After a thorough physical and mental examination has been made by the medical staff of such hospital, the chief medical officer of the hospital or his designee is authorized to sign an application for involuntary hospitalization if necessary. Such application shall be forwarded to the court of the county in which that hospital is located for action pursuant to the provisions of this chapter relative thereto. (Code 1933, § 88-524, enacted by Ga. L. 1969, p. 837, § 1; Code 1933, § 88-507.8, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 2002, p. 1324, § 1-18.)

37-3-104. Procedure upon discovery that a patient hospitalized in Georgia is not a resident.

If a hospitalized patient is discovered not to be a resident, the regional state hospital administrator of the treatment facility in which the patient is hospitalized shall seek his transfer to the custody of authorities of the state of his residence or to a publicly owned or publicly operated psychiatric hospital in that state. Notwithstanding an individual's status as a nonresident, nothing contained in this Code section shall prevent the voluntary hospitalization of such individual under this chapter for which due payment is made by such individual or others on his behalf nor shall it prevent the transfer, custody, care, or treatment of such individual in accordance with the terms of any reciprocal agreement between the State of Georgia and any other state, the District of Columbia, or any territory or possession of the United States. This Code section shall not apply to persons confined to any facility operated by or under the control of the United States Department of Veterans Affairs or any other federal agency. (Ga. L. 1960, p. 837, § 21; Code 1933, § 88-521, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-508.4, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-507.3, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 2002, p. 1324, § 1-18.)

Cross references. — Rights of citizens of other states while in Georgia generally, § 1-2-9.

JUDICIAL DECISIONS

Cited in Kiker v. Kiker, 126 Ga. App. 39, 189 S.E.2d 880 (1972); Trapnell v. Smith, 131 Ga. App. 254, 205 S.E.2d 875 (1974); Townsend v. Cain, 140 Ga. App. 251, 230 S.E.2d 504 (1976).

ARTICLE 5

PAYMENT OF EXPENSES OF PATIENT CARE AND TRANSPORTATION GENERALLY

37-3-120. Effect of inability to pay on right to care and treatment.

It is the policy of this state that no person shall be denied care and treatment for mental illness nor shall services be delayed at a facility of the state or a political subdivision of the state because of inability to pay for such care and treatment. (Code 1933, § 88-502.2, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.3, enacted by Ga. L. 1978, p. 1789, § 1.)

Cross references. — Payment of patient expenses for support, treatment in state institutions generally, Ch. 9 of this title.

RESEARCH REFERENCES

ALR. — Constitutionality of statute imposing liability upon estate or relatives of insane person for his support in asylum, 20 ALR3d 363.

37-3-121. Liability for certain expenses of transporting, examining, and caring for patients.

(a) The responsibility for paying the expenses for transporting, examining, and caring for patients, which expenses are not provided for under Chapter 9 of this title, relating to the payment of costs of care of persons admitted to state institutions under the department, shall be in the following order:

(1) The patient or his estate;

(2) Persons legally obligated or legally responsible for the support of the patient;

(3) The county of the patient's legal residence, provided that the county governing authority passes an appropriate resolution assuming such responsibility; and

(4) The department, when the General Assembly appropriates funds for such purpose.

(b) The patient or those legally obligated for his support shall not be responsible for such expenses as described above when they were incurred in transporting a patient who is released by a court or a facility before involuntary treatment as not being a mentally ill person in need of involuntary treatment.

(c) The board is authorized to issue rules and regulations governing the provisions of this Code section as it relates to the department. (Code 1933, § 88-508.8, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-507.7, enacted by Ga. L. 1978, p. 1789, § 1.)

Cross references. — Payment of costs of hospital care for the indigent, § 31-8-1 et seq. Medical assistance generally, § 49-4-140 et seq.

37-3-122. Payment of expenses incurred in connection with hearings held under this chapter.

(a) Except as provided in this Code section, the expenses of any hearing held under this chapter by a court or by a hearing examiner, including attorneys' fees authorized by paragraph (1) of subsection (b) of this Code section and including hearing officer expenses authorized by paragraph (3) of subsection (b) of this Code section, shall be paid by the county in which the patient has his residence or, if the patient is a transient, by the county in which the patient was initially taken into the custody of the state. Payment by such county of the hearing expenses shall only be required if the person who actually presides over the hearing executes an affidavit or includes a statement in his final order relating to the hearing that the assets of the patient, his estate, and any persons legally obligated to support the patient appear to be insufficient to defray such expenses, based upon all relevant information available to the person who actually presides over the hearing. Such affidavit or statement may include the patient's name, address, and age. The cost on appeal to the appropriate court shall be the same as provided for in other appeals from the probate and juvenile courts.

(b) Expenses of any hearing held under this chapter shall include:

(1) The fee to be paid to an attorney appointed under this chapter to represent a patient at such hearing. Such fee shall be as agreed between the attorney and the appointing court but shall not exceed an amount determined under the fee schedule followed by the county when computing the fees to be paid to an attorney who has been appointed to represent an indigent criminal defendant plus actual expenses which an attorney may incur and which have been approved by the court holding the hearing. In exceptional circumstances, the attorney may apply to the superior court of the judicial circuit in which the hearing was held for an order granting reasonable fees in excess of the amounts specified in this paragraph;

(2) The fee to be paid to the court, which fee shall be to defray the cost of clerical help and the cost of any additional office space and equipment required for the conduct of such hearing. In hearings conducted pursuant to Code Section 37-3-83 such fee shall be $20.00 and in all other hearings under this chapter such fee shall be $40.00, excluding attorneys' fees and expenses of the hearing officer; and

(3) The fee to be paid to the hearing officer appointed pursuant to subparagraph (A) of paragraph (4) of Code Section 37-3-1 to conduct a hearing. Such fee shall be as agreed between the hearing officer and the appointing court, but shall not exceed an amount determined under the fee schedule followed by the county when computing the fees to be paid to an attorney who has been appointed to represent an indigent criminal defendant plus actual expenses which the hearing officer may incur and which have been approved by the court holding the hearing. In exceptional circumstances, the hearing officer may apply to the superior court of the judicial circuit in which the hearing was held for an order granting reasonable fees in excess of the amounts specified in this paragraph. The $40.00 court cost authorized by paragraph (2) of this subsection shall also be authorized to defray the cost of clerical help and additional office space and equipment required for the conduct of such hearings.

(c) The expenses incurred by a county for a mental health hearing held by a probate court judge or an attorney on his or her staff for an out-of-county patient shall be reimbursed by the county in which the patient has his or her residence. Such amount shall not exceed the amount which would have been paid by the county to a noncounty employed hearing officer, plus any other authorized expenses in connection with the hearing. (Ga. L. 1958, p. 697, § 24; Ga. L. 1960, p. 837, § 20; Code 1933, § 88-520, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-508.2, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1975, p. 719, § 1; Ga. L. 1976, p. 328, § 1; Code 1933, § 88-507.2, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 1042, § 2; Ga. L. 1985, p. 875, § 1; Ga. L. 1992, p. 2521, § 5.)

JUDICIAL DECISIONS

Attorney fees not recoverable in commitment proceedings. — There is no statutory authority for the award of attorney fees to a patient who was ordered discharged in involuntary commitment proceedings under O.C.G.A. § 37-3-1 et seq. Georgia Mental Health Inst. v. Brady, 263 Ga. 591, 436 S.E.2d 219 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Limit of $40.00 contained in the statute applies only to the amount which must be paid, exclusive of attorney fees, to the court by a third party, that is, either a person responsible for the care of the patient or, in an appropriate case, the county of residence of the patient if that is different than the county in which the hearing is held; the ceiling on the compensation of the hearing officer is a negotiated matter, between the governing authority of a county in which the probate court lies, the probate court, and the person selected to be the hearing officer; there is, however, no authority to pass the expense on to a third party to the extent the compensation exceeds $40.00. 1978 Op. Att'y Gen. No. U78-38.

RESEARCH REFERENCES

ALR. — Eligibility for welfare benefits as affected by claimant's status as trust beneficiary, 21 ALR4th 729.

ARTICLE 6

RIGHTS AND PRIVILEGES OF PATIENTS, THEIR REPRESENTATIVES, ETC., GENERALLY

Cross references. — Tolling of statute of limitations due to mental illness or mental retardation of person to whom cause of action accrues, § 9-3-90.

RESEARCH REFERENCES

ALR. — Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USC §§ 1997 —1997j, 93 ALR Fed. 706.

PART 1

GENERAL PROVISIONS

37-3-140. Retention of rights and privileges by patients generally; right to due process.

Patients shall retain all rights and privileges granted other persons or citizens. Notwithstanding any other provision of law to the contrary, no person who is receiving or has received services for a mental illness shall be deprived of any civil, political, personal, or property rights or be considered legally incompetent for any purpose without due process of law. (Ga. L. 1960, p. 837, § 16; Code 1933, § 88-516, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.1, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1.)

Cross references. — Rights of persons generally, T. 1, C. 2. Capacity of mentally ill persons to enter into contracts, § 13-3-24. Incurable mental illness as grounds for divorce, § 19-5-3. Testamentary capacity of insane persons, § 53-4-11.

JUDICIAL DECISIONS

Cited in Trapnell v. Smith, 131 Ga. App. 254, 205 S.E.2d 875 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Involuntary commitment in a state hospital is not tantamount to an adjudication of incompetence and when superintendent has not imposed any restriction upon patient, patient may exercise civil rights including right to receive

funds and property by inheritance without intervention of a guardian. 1962 Op. Att'y Gen. p. 407.

RESEARCH REFERENCES

ALR. — Applicability, in proceedings under statutes relating to sexual psychopaths, of constitutional provisions for the protection of a person accused of crime, 34 ALR3d 652.

Voting rights of persons mentally incapacitated, 80 ALR3d 1116.

Construction and application of state patient bill of rights statutes, 87 ALR5th 277.

37-3-141. Patients' right to legal counsel.

It shall be the responsibility of the department to see that every patient is given the opportunity to secure legal counsel at his own expense to represent him in connection with private, personal, domestic, business, civil, criminal, and all other legal matters in which he may be involved during hospitalization. (Code 1933, § 88-502.12, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.15, enacted by Ga. L. 1978, p. 1789, § 1.)

Cross references. — Right of legal counsel generally, U.S. Const., amend. 6, and Ga. Const., 1983, Art. I, Sec. I, Para. XIV.

RESEARCH REFERENCES

ALR. — Right to counsel in insanity or incompetency adjudication proceedings, 87 ALR2d 950.

Accused's right to represent himself in state criminal proceedings — modern state cases, 98 ALR3d 13.

37-3-142. Communication and visitation rights of patients; inspection, restriction, and censorship of patient correspondence; establishment of regulations governing visits and use of telephones.

(a) Each patient in a facility shall have the right to communicate freely and privately with persons outside the facility and to receive visitors inside the facility.

(b) Except as otherwise provided in this Code section, each patient shall be allowed to receive and send sealed, unopened mail; and no patient's incoming or outgoing mail shall be opened, delayed, held, or censored by the facility.

(c) If there are reasonable grounds to believe that incoming mail contains items or substances which may be dangerous to the patient or others, the chief medical officer may direct reasonable examination of such mail and, after examination, may regulate the disposition of such items or substances found therein. All writings must be presented to the patient within 24 hours of inspection.

(d) The chief medical officer may apply to the court for a temporary order to restrict outgoing mail. If the court determines that probable cause exists that such mail is dangerous to the patient or others, the court may order such mail temporarily restricted, provided that a full and fair hearing shall be held within five days after the issuance of such temporary order to determine whether or not an order of restriction for an extended time shall issue. In no event shall mail be restricted pursuant to such temporary order for more than five days after the date of the temporary order. A full and fair hearing shall be held after the issuance of the temporary order. If, at such hearing, the patient's outgoing mail is determined to be dangerous to the patient or others, the court may order such mail restricted for an extended period not to exceed 30 days. Restrictions for extended periods may be renewed for additional periods not to exceed 30 days each, provided that no such restriction shall be renewed except upon a renewed finding at another full and fair hearing for each such renewal that such mail is dangerous to the patient or others.

(e) If an injunction against the sending of mail by a patient is issued by a court, the chief medical officer shall restrict outgoing mail as provided by the order of the court.

(f) No restriction of either incoming or outgoing mail under subsection (c) or (d) of this Code section shall exceed a period of five days, notwithstanding the authority to restrict such mail for longer periods, provided that such restrictions may be continued as necessary for periods not to exceed five days each upon determination by the chief medical officer, prior to each continuation, that such mail continues to be dangerous to the patient or others; provided, further, that, in the case of outgoing mail, such continuation periods in the aggregate shall not exceed the restriction period authorized in the court order.

(g) Correspondence of the patient with his attorney shall not be restricted in any manner under this Code section. Correspondence of the patient with public officials shall not be restricted in any manner under subsection (c) of this Code section.

(h) Each time a patient's incoming mail is ordered examined by the chief medical officer and each time a patient's outgoing mail is ordered examined by a temporary court order, written notice of such order and notice of a right to a full and fair hearing within five days after such temporary court order shall be served on the patient and his representatives as provided in Code Section 37-3-147. A voluntary patient may waive in writing such notice to his representatives.

(i) The circumstances surrounding the examination of any mail under subsection (c), (d), (e), or (f) of this Code section shall be recorded on the patient's clinical record.

(j) The chief medical officer is authorized to establish reasonable regulations governing visitors, visiting hours, and the use of telephones by patients. (Ga. L. 1890-91, p. 237, §§ 1, 2, 5; Ga. L. 1892, p. 109, §§ 1, 3; Code 1933, §§ 88-901, 88-902, 88-903; Ga. L. 1958, p. 697, § 17; Ga. L. 1960, p. 837, § 16; Code 1933, § 88-516, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.5, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.7, enacted by Ga. L. 1978, p. 1789, § 1.)

37-3-143. Patients' rights in regard to personal effects; liability of facility's employees and staff members for loss of or damage to patients' personal effects.

A patient's rights to his personal effects shall be respected. The chief medical officer may take temporary custody of such effects when required for medical reasons. The facility shall make reasonable efforts to assure the safety of the patient's belongings, but no employee or staff member shall be responsible for loss of or damage to such property where reasonable safety precautions have been taken. (Code 1933, § 88-502.6, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.8, enacted by Ga. L. 1978, p. 1789, § 1.)

37-3-144. Patients' right to vote.

Each patient in a facility who is eligible to vote shall be given his right to vote in primary, special, and general elections and in referendums. The superintendent or regional state hospital administrator of each facility shall permit and reasonably assist patients:

(1) To obtain voter registration forms, applications for absentee ballots, and absentee ballots;

(2) To comply with other requirements which are prerequisite for voting; and

(3) To vote by absentee ballot if necessary. (Ga. L. 1960, p. 837, § 16; Code 1933, § 88-516, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.7, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.9, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1995, p. 10, § 37; Ga. L. 2002, p. 1324, § 1-19.)

Cross references. — Right to elective franchise generally, U.S. Const., amend. 15; Ga. Const., 1983, Art. II, Sec. I, Para. II; and § 1-2-6. Absentee voting, § 21-2-380 et seq.

37-3-145. Employment of patients outside facilities.

If a patient wishes to be employed outside a facility and if such employment will aid in the patient's treatment, he shall be assisted in

his efforts to secure suitable employment and all benefits flowing from such employment. The department shall encourage such employment of patients and shall promote the training of patients for gainful employment after discharge. All benefits of such employment shall accrue solely to the patient. (Code 1933, § 88-502.8, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.10, enacted by Ga. L. 1978, p. 1789, § 1.)

37-3-146. Education of children undergoing treatment in a facility.

The rights of any child under treatment in a facility to an appropriate education at public expense shall not be abridged during hospitalization; and the special educational needs of each child shall be individually considered and respected. The Department of Behavioral Health and Developmental Disabilities and the State Department of Education shall ensure that education is provided for all patients of school age who are hospitalized in any state owned, state operated, or any other designated facility. (Code 1933, § 88-502.9, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.11, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 2009, p. 453, § 3-2/HB 228.)

37-3-147. Patient representatives and guardians ad litem; notification provisions; duration and scope of guardianship ad litem.

(a) At the time a patient is admitted to any facility under this chapter, that facility shall use diligent efforts to secure the names and addresses of at least two representatives, which names and addresses shall be entered in the patient's clinical record.

(b) The patient may designate one representative; the second representative or, in the absence of designation of one representative by the patient, both representatives shall be selected by the facility. If the facility is to select both representatives, it must make one selection from among the following persons in the order of listing: the patient's legal guardian, spouse, adult child, parent, attorney, adult next of kin, or adult friend, provided that, in the case of a patient whose representative or representatives have been appointed by the court under Code Section 37-3-62, the facility shall not select a different representative. The second representative shall also be selected from the above list but without regard to the order of listing, provided that the second representative shall not be the person who filed the petition to have the patient admitted to the facility.

(c) If the facility is unable to secure at least two representatives after diligent search or if the department is the guardian of the patient, that fact shall be entered in the patient's clinical record and the facility shall

apply to the court in the county of the patient's residence for the appointment of a guardian ad litem, which guardian ad litem shall not be the department. On application of any person or on its own motion, the court may also appoint a guardian ad litem for a patient for whom two representatives have been named whenever the appointment of a guardian ad litem is deemed necessary for protection of the patient's rights. Such guardian ad litem shall also act as representative of the patient and shall have the powers granted to representatives by this chapter.

(d) At any time notice is required by this chapter to be given to the patient's representatives, such notice shall be served on the representatives designated under this Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless otherwise provided, notice may be served in person or by first-class mail. When notice is served by mail, a record shall be made of the date of mailing and shall be placed in the patient's clinical record. Service shall be completed upon mailing.

(e) At any time notice is required by this chapter to be given to the patient, the date on which notice is given shall be entered on the patient's clinical record. If the patient is unable to comprehend the written notice, a reasonable effort shall be made to explain the notice to him.

(f) At the time a court enters an order pursuant to this chapter, such order and notice of the date of entry of the order shall be served on the patient and his representatives as provided in subsection (d) of this Code section.

(g) Notice of an involuntary patient's admission to a facility shall be given to his representatives in writing. If such involuntary admission is to an emergency receiving facility, notice shall also be given by that facility to the patient's representatives by telephone or in person as soon as possible.

(h) In every instance in which a court shall appoint a guardian ad litem for any person pursuant to the terms of this chapter, such guardianship shall be for the limited purpose stated in the order of the court and shall expire automatically after 90 days or after a lesser time stated in the order. The responsibility of the guardian ad litem shall not extend beyond the specific purpose of the appointment. (Code 1933, § 88-502.15, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1971, p. 623, § 1; Ga. L. 1971, p. 784, § 1; Code 1933, § 88-502.19, enacted by Ga. L. 1971, p. 807, § 1; Code 1933, § 88-502.18, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1995, p. 10, § 37.)

Cross references. — Guardians of incapacitated adults, T. 29, C. 5.

JUDICIAL DECISIONS

Cited in Anderson v. Smith, 76 Ga. App. 171, 45 S.E.2d 282 (1947); Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980); Benham v. Edwards, 501 F. Supp. 1050 (N.D. Ga. 1980).

RESEARCH REFERENCES

ALR. — Construction and application of statute prescribing that notice of petition or hearing for appointment of guardian be of such nature or be given to such persons as court deems reasonable or proper, 109 ALR 338.

Liability of guardian ad litem for infant party to civil suit for negligence in connection with suit, 14 ALR5th 929.

37-3-148. Right of patients or representatives to petition for writ of habeas corpus and for judicial protection of rights and privileges granted by this chapter.

(a) At any time and without notice, a person detained by a facility or a relative or friend on behalf of such person may petition, as provided by law, for a writ of habeas corpus to question the cause and legality of detention and to request any court of competent jurisdiction on its own initiative to issue a writ for release, provided that, in the case of any such petition for the release of a person detained in a facility pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the petition along with proper certificate of service shall also be served upon the presiding judge of the court ordering such detention and the prosecuting attorney for such court, which service may be made by certified mail or statutory overnight delivery, return receipt requested.

(b) A patient or his representatives may file a petition in the appropriate court alleging that the patient is being unjustly denied a right or privilege granted by this chapter or that a procedure authorized by this chapter is being abused. Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue appropriate orders to correct any abuse under this chapter. (Ga. L. 1958, p. 697, § 18; Ga. L. 1960, p. 837, § 17; Code 1933, § 88-517, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.11, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.14, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1980, p. 678, § 2; Ga. L. 1984, p. 22, § 37; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Cross references. — Habeas corpus generally, T. 9, C. 14. Penalty for malicious confinement of sane person in asylum, § 16-5-43.

JUDICIAL DECISIONS

Inmate of the Milledgeville (now Central) State Hospital may file a petition to try the question of sanity. In fact no formal petition for a trial is required. If in fact an affidavit by a friend or relative is a prerequisite to such a trial, to the effect that the alleged cause of commitment did not and does not exist, and that, if it did, it had ceased to exist, such an affidavit made by counsel for the petitioning inmate is sufficient. Strickland v. Peacock, 88 Ga. App. 384, 77 S.E.2d 20 (1953) (decided under former Code 1933, §§ 35-236, 35-237).

Legislature clearly intended the committing court to be a continuing monitor in the case of the not guilty by reason of insanity defendant; the specific reference in subsection (a) of O.C.G.A. § 37-3-148 of notice to the committing court acknowledges and accounts for this as well as the common circumstance of a writ of habeas corpus being brought before a court other than the one ordering the detention; although it does not involve the writ of habeas corpus, to interpret subsection (b) of § 37-3-148 as allowing any forum other than the committing court as the "appropriate" one in the situation of a not guilty by reason of insanity committee would be to allow the adjudication of the petition without even notice to the very forum responsible for the ultimate determinations of detention and release. Ledbetter v. Cannon, 192 Ga. App. 392, 384 S.E.2d 875 (1989).

Committing court has exclusive jurisdiction to hear petition. — Committing court for a not guilty by reason of insanity defendant has exclusive jurisdiction to hear petition for judicial protection of rights when the defendant seeks a modification of treatment involving off-campus privileges. Ledbetter v. Cannon, 192 Ga. App. 392, 384 S.E.2d 875 (1989).

Exhaustion of remedies not required before seeking habeas relief. — Because an involuntary detainee is specifically granted the right to seek habeas relief "at any time" by § 37-3-148, exhaustion of remedies is not required before a person involuntarily committed to a mental health facility following an acquittal by reason of insanity may seek habeas relief. Hogan v. Nagel, 273 Ga. 577, 543 S.E.2d 705 (2001).

Involuntary detainee is not required to exhaust remedies available under the criminal procedure code, pursuant to O.C.G.A. § 17-7-131(f), prior to seeking habeas relief pursuant to O.C.G.A. § 37-3-148(a). Hogan v. Nagel, 276 Ga. 197, 576 S.E.2d 873 (2003).

Habeas relief properly sought for involuntarily detained patient. — Trial court did not exceed the court's authority by granting a writ of habeas corpus, pursuant to O.C.G.A. § 9-14-19, to an involuntary detainee who had been committed to a state hospital upon a finding of not guilty by reason of insanity in the deaths of the detainee's grandparents and ordering that the state hospital officials prepare a plan for supervision and outpatient services upon the detainee's release; the detainee was entitled to seek relief by that route, pursuant to O.C.G.A. 37-3-148(a), or by seeking a release petition pursuant to O.C.G.A. § 17-7-131(f). Hogan v. Nagel, 276 Ga. 197, 576 S.E.2d 873 (2003).

Petition for unconditional release denied. — Patient, who was involuntarily committed to a hospital after the patient was found not guilty by reason of insanity of several crimes, was not entitled to an unconditional release from the hospital because the patient, who had to take medication, had engaged in dangerous or threatening acts towards others, the patient's personality disorders and the patient's schizo-affective disorder qualified as mental illnesses under O.C.G.A. § 37-1-1(12), and the patient's schizo-affective disorder also would have made the defendant an imminent threat of harm to others if the defendant was unconditionally released. Dupree v. Schwarzkophf, No. S11A0290, 2011 Ga. LEXIS 508 (June 27, 2011).

OPINIONS OF THE ATTORNEY GENERAL

Alcoholics have the same rights as those afforded the mentally ill. 1973 Op. Att'y Gen. No. U73-109.

Reasonable interpretation can be made that the civil procedure code, is inapplicable to former Code 1933, § 88-517 (see O.C.G.A. § 37-3-148). The civil procedure statutes, (see O.C.G.A. Art. 2, Ch. 14, T. 9), concerns itself with the exclusive procedures for suing out a writ by one restrained by virtue of a sentence imposed by a state court of record; the validity of this conclusion turns on the interpretation of the word "sentence." 1967 Op. Att'y Gen. No. 67-320.

RESEARCH REFERENCES

ALR. — Showing as to mental condition which will entitle one restrained on ground of insanity to release, 19 ALR 715.

Habeas corpus on ground of restoration to sanity of one confined as an incompetent other than in connection with crime, 21 ALR2d 1004.

Constitutional right to jury trial in proceeding for adjudication of incompetency or insanity or for restoration, 33 ALR2d 1145.

Right, without judicial proceeding, to arrest and detain one who is, or is suspected of being, mentally deranged, 92 ALR2d 570.

Validity of statutory provision for commitment to mental institution of one acquitted of crime on ground of insanity without formal determination of mental condition at time of acquittal, 50 ALR3d 144.

37-3-149. Establishment of procedures for receiving patients' and staff complaints; making of final decisions; establishment of rules and regulations implementing procedures; complaint procedures as alternative to legal remedies.

Each facility shall establish procedures whereby complaints of the patient or complaints of the staff concerning treatment of the patient can be speedily heard, with final decisions to be made by the superintendent, the regional state hospital administrator, or an advisory committee, whichever is appropriate. The board shall establish reasonable rules and regulations for the implementation of such procedures. However, the patient shall not be required to utilize these procedures in lieu of other available legal remedies. (Code 1933, § 88-502.22, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 2002, p. 1324, § 1-11.)

Cross references. — Reports and investigations regarding mistreatment of hospital patients, residents of long-term care facilities, §§ 31-7-9, 31-8-50 et seq., 31-8-80 et seq., 31-8-100 et seq.

37-3-150. Right to appeal orders of probate court, juvenile court, or hearing examiner; payment of costs of appeal; right to subsequent appeal; right to legal counsel on appeal.

The patient, the patient's representatives, or the patient's attorney may appeal any order of the probate court or hearing officer rendered in a proceeding under this chapter to the superior court of the county in which the proceeding was held, except as otherwise provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile court rendered in a proceeding under this chapter to the Court of Appeals and the Supreme Court. The appeal to the superior court shall be made in the same manner as appeals from the probate court to the superior court, except that the appeal shall be heard before the court sitting without a jury as soon as practicable but not later than 30 days following the date on which the appeal is filed with the clerk of the superior court. The appeal from the order of the juvenile court to the Court of Appeals and the Supreme Court shall be as provided by law but shall be heard as expeditiously as possible. The patient must pay all costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The patient shall retain all rights of review of any order of the superior court, the Court of Appeals, and the Supreme Court, as provided by law. The patient shall have a right to counsel or, if unable to afford counsel, shall have counsel appointed for the patient by the court. The appeal rights provided to the patient, the patient's representatives, or the patient's attorney in this Code section are in addition to any other appeal rights which the parties may have, and the provision of the right for the patient, the patient's representatives, or the patient's attorney to appeal does not deny the right to the Department of Behavioral Health and Developmental Disabilities to appeal under the general appeal provisions of Code Sections 5-3-2 and 5-3-3. (Code 1933, § 88-502.16, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.19, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1986, p. 982, § 11; Ga. L. 1994, p. 1072, § 1; Ga. L. 1995, p. 10, § 37; Ga. L. 2009, p. 453, § 3-2/HB 228.)

Editor's notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

JUDICIAL DECISIONS

Judicial nature of judgments. — Judgments by a court of ordinary (now probate court) ruling on mental competency or incompetency are judicial in nature and appealable to the superior court by the losing party. Tingle v. Harvill, 125 Ga. App. 312, 187 S.E.2d 536 (1972).

Procedure for determining competency seeks to protect the ward as well as the guardian and the members of the family who are required to receive notification by granting their full day in court including all appeals permitted in judicial proceedings. Tingle v. Harvill, 125

Ga. App. 312, 187 S.E.2d 536 (1972).

Guardian has the right of appeal to the superior court from an order of the court of ordinary (now probate court) restoring the ward to competency. Tingle v. Harvill, 125 Ga. App. 312, 187 S.E.2d 536 (1972).

Time for filing an appeal from the order of a court of ordinary (now probate court) in the application for the appointment of a guardian is governed by statute. Kiker v. Kiker, 126 Ga. App. 39, 189 S.E.2d 880 (1972).

Mental health facility has no right to appeal adverse commitment decision or to detain patient. — Mental health facility did not have the right to appeal from an adverse involuntary commitment decision and the facility did not have statutory authority, nor would it have been constitutional, to detain the patient pending appeal of a probate court order of discharge. Georgia Mental Health Inst. v. Brady, 263 Ga. 591, 436 S.E.2d 219 (1993).

OPINIONS OF THE ATTORNEY GENERAL

When appointment of guardian ad litem required Assuming compliance with the requisite search for representatives, the probate court need appoint a guardian ad litem only when there is no one in the specified categories available to represent the patient's interests. 1977 Op. Att'y Gen. No. U77-65.

Probate judge may not appoint physicians who are not residents of the judge's county to a panel whose purpose is to determine the mental competency of a person, unless it is made to appear that there are not two physicians who do reside in the county. 1975 Op. Att'y Gen. No. U75-52.

Georgia Law 1986, p. 982, which affects procedures in probate courts in certain counties, does not affect mental health cases heard by probate courts under O.C.G.A. §§ 37-3-150, 37-7-150 and 37-4-110. 1986 Op. Att'y Gen. No. U86-18.

RESEARCH REFERENCES

ALR. — Effect of death of appellant upon appeal from judgment of mental incompetence against him, 54 ALR2d 1161.

Part 2

Rights and Privileges as to Manner of Care and Treatment and as to Maintenance and Release of Clinical Records

Cross references. — Production of medical records for judicial proceedings generally, § 24-10-70 et seq. Rights of mentally ill persons regarding consent to surgical or medical treatment generally, § 31-9-4.

37-3-160. Individual dignity of patients to be respected; treatment of the mentally ill as medical patients; use of criminal facilities and procedures.

The patient's dignity as an individual shall be respected at all times and upon all occasions, including any occasion wherein the patient is taken into custody, detained, or transported. Mentally ill patients or those suspected of being mentally ill shall, to the maximum extent reasonably possible, be treated at all times as medical patients. All

patients shall be treated by a physician or psychologist acting within the scope of his or her license. Except where required under conditions of extreme urgency, those procedures, facilities, vehicles, and restraining devices normally utilized for criminals or those accused of crime shall not be used in connection with the mentally ill. (Code 1933, § 88-502.1, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.2, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1992, p. 1902, § 12.)

Law reviews. — For note comparing procedures for hospitalization of the mentally ill in Georgia to other jurisdictions and suggesting improvements, see 7 Mercer L. Rev. 361 (1956).

RESEARCH REFERENCES

ALR. — Applicability, in proceedings under statutes relating to sexual psychopaths, of constitutional provisions for the protection of a person accused of crime, 34 ALR3d 652.

Standard of proof required under statute providing for commitment of sexual offenders or sexual psychopaths, 96 ALR3d 840.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 ALR3d 854.

37-3-161. Securing of least restrictive alternative placement; assisting patient in securing placement in noninstitutional community facilities and programs.

It is the policy of the state that the least restrictive alternative placement be secured for every patient at every stage of his medical treatment and care. It shall be the duty of the facility to assist the patient in securing placement in noninstitutional community facilities and programs. (Code 1933, § 88-502.21, enacted by Ga. L. 1978, p. 1789, § 1.)

JUDICIAL DECISIONS

Cited in Bruscato v. Gwinnett-Rockdale-Newton Cmty. Serv. Bd., 290 Ga. App. 638, 660 S.E.2d 440 (2008).

37-3-162. Patients' care and treatment rights.

(a) Each patient in a facility and each person receiving services for mental illness shall receive care and treatment that is suited to his needs and is the least restrictive appropriate care and treatment. Such care and treatment shall be administered skillfully, safely, and humanely with full respect for the patient's dignity and personal integrity.

(b) Each patient shall have the right to participate in his care and treatment. The board shall issue regulations to ensure that each patient participates in his care and treatment to the maximum extent possible. Unless the disclosure to the patient is determined by the chief

medical officer or the patient's treating physician or psychologist to be detrimental to the physical or mental health of the patient, and unless a notation to that effect is made a part of the patient's record, the patient shall have the right to reasonable access to review his medical file, to be told his diagnosis, to be consulted on the treatment recommendation, and to be fully informed concerning his medication, including its side effects and available treatment alternatives.

(c) It is the duty of the chief medical officer to ensure that each patient receives such medical attention as is suitable to his condition and that no treatment shall be given which is not recognized as standard psychiatric treatment, except upon the written consent of the patient or, if applicable, his guardian having capacity to give such consent. If such consent is given by someone other than the patient or such guardian, court approval must be obtained after a full and fair hearing.

(d) If a patient hospitalized under this chapter is able to secure the services of a private physician or psychologist, he shall be allowed to see his physician or psychologist at any reasonable time. The chief medical officer is authorized and directed to establish regulations designed to facilitate examination and treatment which a patient may request from such private physician or psychologist.

(e) Every patient admitted to a facility under this chapter shall be examined by the staff of the admitting facility as soon as possible after his admission. (Ga. L. 1958, p. 697, § 15; Ga. L. 1960, p. 837, § 14; Code 1933, § 88-514, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.3, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.4, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1991, p. 1059, § 20; Ga. L. 1992, p. 1902, § 13.)

Cross references. — Rights of mentally ill persons regarding consent to surgical or medical treatment generally, § 31-9-4.

Law reviews. — For article, "The Right to Refuse Psychiatric Treatment: Law and Medicine at the Interface," see 35 Emory L.J. 139 (1986).

JUDICIAL DECISIONS

Duty to safeguard and protect patient. — Private hospital in which a patient is placed for treatment owes duty of safeguarding and protecting patient from any known or reasonably apprehended danger from the patient which may be due to the patient's mental incapacity, and to use ordinary and reasonable care to prevent such danger. Brawner v. Bussell, 50 Ga. App. 840, 179 S.E. 228 (1935).

RESEARCH REFERENCES

ALR. — Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 ALR3d 854.

Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his or her consent—state cases, 75 ALR4th 1124.

Prisoner's right to die or refuse medical treatment, 66 ALR5th 111.

37-3-163. Recognition of patient's physical integrity; rights to refuse medication; obtaining consent to treatment and surgery; emergency surgery; immunity of hospital or physician; direction of notice of actions taken under Code section.

(a) It shall be the policy of this state to recognize the personal physical integrity of all patients.

(b) It shall be the policy of this state to protect, within reason, the right of every individual to refuse medication except in cases where a physician determines that refusal would be unsafe to the patient or others. If the patient continues to refuse medication after such initial emergency treatment, a concurring opinion from a second physician must be obtained before medication can be continued without the patient's consent. Further, in connection with any hearing under this chapter, the patient has the right to appear and testify as free from any side effects or adverse effects of the medication as is reasonably possible.

(c) Any patient objecting to the treatment being administered to him shall have a right to request a protective order pursuant to Code Section 37-3-148.

(d) Except as provided in subsections (b) and (e) of this Code section, consent to medical treatment and surgery shall be obtained and regulated by Chapter 9 of Title 31.

(e) In cases of grave emergency where the medical staff of the facility in which a mentally ill individual has been accepted for treatment determines that immediate surgical or other intervention is necessary to prevent serious physical consequences or death and where delay in obtaining consent would create a grave danger to the physical health of such person, as determined by at least two physicians, then essential surgery or other intervention may be administered without the consent of the person, the spouse, next of kin, attorney, guardian, or any other person. In such cases, a record of the determination of the physicians shall be entered into the medical records of the patient and this will be proper consent for such surgery or other intervention. Such consent will be valid notwithstanding the type of admission of the patient and it shall also be valid whether or not the patient has been adjudged incompetent. This Code section is intended to apply to those individuals who, as a result of their advanced age, impaired thinking, or other disability, cannot reasonably understand the consequences of withhold-

ing consent to surgery or other intervention as contemplated by this Code section. Any hospital or any physician, agent, employee, or official who obtains consent or relies on such consent, as authorized by this Code section, and who acts in good faith and within the provisions of this chapter shall be immune from civil or criminal liability for his or her actions in connection with the obtaining of or the relying upon such consent; provided, however, that nothing in this Code section shall be construed to relieve any hospital or any physician, agent, employee, or official from liability for failing to meet the applicable standard of care in the provision of treatment to a patient. Actual notice of any action taken pursuant to this Code section shall be given to the patient and the spouse, next of kin, attorney, guardian, or representative of the patient as soon as practicably possible. (Code 1933, § 88-508.11, enacted by Ga. L. 1977, p. 889, § 1; Code 1933, § 88-502.6, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 2011, p. 346, § 3/HB 343.)

The 2011 amendment, effective July 1, 2011, in the fifth sentence of subsection (e), inserted "hospital or any" near the beginning, inserted "or her" near the middle, and added the proviso at the end.

Cross references. — Rights of mentally ill persons regarding consent to surgical or medical treatment generally, § 31-9-4.

JUDICIAL DECISIONS

Involuntary administration of drugs by state does not violate due process. — State's policy and procedure for the involuntary administration of antipsychotic drugs to patients at the state mental hospital does not violate substantive or procedural due process. Hightower by Dehler v. Olmstead, 959 F. Supp. 1549 (N.D. Ga. 1996).

No legal authority to confine voluntary patient. — When the patient, who was voluntarily confined, killed and wounded another, the trial court erred by denying the physicians' motions for summary judgment when, at the relevant time, the patient was an out-patient. The physicians had no control of the patient in the sense that the physician could claim legal authority to confine or restrain the patient against the patient's will unless the patient met the criteria for involuntary commitment. Additionally, there was no evidence from which one could conclude that the physicians knew or reasonably should have known that the patient was likely to cause bodily harm to oneself or to the victims. Keppler v. Brunson, 205 Ga. App. 32, 421 S.E.2d 306 (1992).

RESEARCH REFERENCES

ALR. — Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty, 74 ALR4th 1099.

Propriety of surgically invading incompetent or minor for benefit of third party, 4 ALR5th 1000.

37-3-164. "Representative," "substantial change" defined; consultation by patient's representative with treatment facility; notification of treatment change; guardian's consultation and notification rights.

(a) As used in this Code section, the term:

(1) "Representative" means the representative designated by the patient or, in the absence of such designation, the person selected as a representative in the order of listing under subsection (b) of Code Section 37-3-147 but shall not mean the patient's legal guardian. At the time of designation or selection, such representative shall be notified of his right to notice and to consultation under this Code section. In order to exercise such rights, the representative shall notify the department on a form supplied by the department of his election to exercise such rights. Upon receiving such notice, the department shall thereafter provide that representative the notification and consultation required by this Code section until that representative notifies the department to the contrary. A patient need not be notified of his representative's rights under this Code section unless such representative has elected to exercise such rights.

(2) "Substantial change" means a significant change including, but not limited to, the transfer within a facility of a patient from a unit primarily serving patients under 18 years of age to a unit primarily serving patients 18 years of age or over or the transfer of a patient from one facility to another but shall not include:

(A) Changes in the routine day-to-day care of the patient;

(B) Routine or periodic changes or adjustments in patient medication;

(C) Changes relating to routine or necessary medical care needs of the patient;

(D) Formulation of the patient's initial individualized service plan;

(E) Changes specifically contemplated in a service plan regarding which the representative has already received notification; or

(F) Discharge of the patient from the facility.

(b) At the time an adult patient's representative is designated or selected under Code Section 37-3-147 and at least every 12 months thereafter, such patient shall be notified that, unless objected to by the patient, such representative will be permitted to consult with the facility regarding the development of the patient's individualized service plan and the patient's treatment under such plan. The represen-

tative of a minor patient and the representative of an adult patient not objecting to consultation as authorized by this Code section may consult with the facility regarding the development of such patient's individualized service plan and the patient's treatment under such plan.

(c) At least seven days prior to any substantial change in the individualized service plan or treatment thereunder of an adult patient, the facility to which the patient has been admitted shall notify the patient that it will notify his representative of such change, unless the patient objects to such notification within 24 hours. A patient's representative shall be notified at least five days prior to any substantial change in such patient's individualized service plan or the treatment under such plan unless such patient is an adult and objects to such notification.

(d) In an emergency where the delay due to providing prior notification under subsection (c) of this Code section would create serious damage to the health of the patient, such a substantial change may be made without such prior notification. The patient's record shall specify the circumstances surrounding the emergency. Within 48 hours after the change, an adult patient shall be notified of his right to object within 24 hours to his representative's being notified of such change. A patient's representative shall be notified of such change within five days after such change occurs unless the patient is an adult and objects to such notification pursuant to subsection (c) of this Code section.

(e) Notification to representatives under subsections (c) and (d) of this Code section may be made by telephone if the date and time of such notification is entered on the patient's clinical record and if such notification is followed within 15 days by written notification.

(f) A patient's legal guardian shall have the consultation and notification rights of a patient's representative under subsections (b) through (d) of this Code section regardless of whether the patient is a minor or whether the patient objects to such consultation or notification. A patient for whom a legal guardian has been appointed shall not be notified of any right to object under this Code section. (Code 1933, § 88-502.24, enacted by Ga. L. 1980, p. 1451, § 2.)

Cross references. — Rights of mentally ill persons regarding consent to surgical or medical treatment generally, § 31-9-4.

37-3-165. Mistreatment, neglect, or abuse of patients prohibited; use of medication, physical restraints, or seclusion restricted; standards for use of physical restraint.

(a) Mistreatment, neglect, or abuse in any form of any patient is prohibited. Medication in quantities that interfere with the patient's treatment program is prohibited. All medication, seclusion, or physical

restraints are to be used solely for the purposes of providing effective treatment and protecting the safety of the patient and other persons.

(b) Physical restraints shall not be applied unless they are determined by an attending physician, a psychologist involved in the care and treatment of a patient, or a clinical nurse specialist in psychiatric/mental health involved in the care and treatment of the patient to be absolutely necessary in order to prevent a patient from seriously injuring himself or herself or others and are required by the patient's medical needs. Such determination shall expire after 24 hours. An attending physician, a psychologist involved in the care and treatment of a patient, or a clinical nurse specialist in psychiatric/mental health involved in the care and treatment of the patient must then make a new determination before the restraint may be continued. Every use of a restraint and the reasons therefor shall be made a part of the clinical record of the patient. A copy of each such entry or a summary of such entries shall be forwarded to the chief medical officer for review. A patient placed in physical restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be made. When the application of a restraint is necessary in emergency situations to protect the patient from immediate injury to himself or herself or to others, restraints may be authorized by attending staff who must immediately report the action taken to the physician and any psychologist involved in the care and treatment of the patient. The facility shall have written policies and procedures which govern the use of restraints and which clearly delineate, in descending order, the personnel who can authorize the use of restraints in emergency situations.

(c) For the purposes of this Code section, those devices which restrain movement, but are applied for protection from accidental injury or required for the medical treatment of the patient's physical condition or for supportive or corrective needs of the patient, shall not be considered physical restraints. However, devices used in such situations must be authorized and applied in compliance with the facility's policies and procedures. The use of such devices shall be a part of the patient's individualized service plan. (Ga. L. 1958, p. 697, § 16; Ga. L. 1960, p. 837, § 15; Code 1933, § 88-515, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.4, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.5, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1982, p. 937, §§ 4, 9; Ga. L. 1997, p. 911, § 4.)

Cross references. — Abuse or mistreatment of hospital patients, residents of long-term care facilities, and other institutions, §§ 31-7-9, 31-8-50 et seq., 31-8-80 et seq., 31-8-100 et seq. Rights of mentally ill persons regarding consent to surgical or medical treatment generally, § 31-9-4.

JUDICIAL DECISIONS

Duty to safeguard and protect patient. — Private hospital in which a patient is placed for treatment owes duty of safeguarding and protecting patient from any known or reasonably apprehended danger from oneself which may be due to the patient's mental incapacity, and to use ordinary and reasonable care to prevent such danger. Brawner v. Bussell, 50 Ga. App. 840, 179 S.E. 228 (1935).

Recovery for wrongful death of insane patient. — When patient, while in care of the hospital, and with knowledge of the authorities in charge, is temporarily insane and in a mental condition where the patient may possibly do injury and harm to the patient or others, and the authorities negligently fail to so care for and keep the patient, and by reason thereof the patient has access to a knife or other sharp instrument, which the patient uses to commit suicide, the authorities of the hospital are guilty of negligence as respects the authorities' duty to keep and care for the patient which is the proximate cause of the homicide, and are liable in damages therefor to the person legally entitled to recover. Brawner v. Bussell, 50 Ga. App. 840, 179 S.E. 228 (1935).

RESEARCH REFERENCES

ALR. — Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 ALR3d 854.

Construction and application of state patient bill of rights statutes, 87 ALR5th 277.

37-3-166. (Effective until January 1, 2013. See note.) Treatment of clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge.

(a) A clinical record for each patient shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises at reasonable times determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:

(1) When the chief medical officer of the facility where the record is kept deems it essential for continued treatment, a copy of the record or parts thereof may be released to physicians or psychologists when and as necessary for the treatment of the patient;

(2) A copy of the record may be released to any person or entity designated in writing by the patient or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court;

(2.1) A copy of the record of a deceased patient or deceased former patient may be released to or in response to a valid subpoena of a

coroner or medical examiner under Chapter 16 of Title 45, except for matters privileged under the laws of this state;

(3) When a patient is admitted to a facility, a copy of the record or information contained in the record from another facility, community mental health center, or private practitioner may be released to the admitting facility. When the service plan of a patient involves transfer of that patient to another facility, community mental health center, or private practitioner, a copy of the record or information contained in the record may be released to that facility, community mental health center, or private practitioner;

(4) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient;

(5) A copy of the record shall be released to the patient's attorney if the attorney so requests and the patient, or the patient's legal guardian, consents to the release;

(6) In a bona fide medical emergency, as determined by a physician treating the patient, the chief medical officer may release a copy of the record to the treating physician or to the patient's psychologist;

(7) At the request of the patient, the patient's legal guardian, or the patient's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;

(8) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this state;

(8.1) A copy of the record may be released to the legal representative of a deceased patient's estate, except for matters privileged under the laws of this state;

(9) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed as to whether a person is or has been a patient in a state facility, as well as the patient's current address, if known; and

(10) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a patient in the facility, and the name, address, and last known whereabouts of any alleged patient perpetrator.

(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is

treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section 24-9-21, 24-9-40, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section 24-9-21, 24-9-40, or 43-39-16.

(d) When a sheriff transports an adult involuntary patient to a facility, that sheriff may request in writing that a notice of such patient's discharge be given to the sheriff; and such notice shall be provided if such patient or the patient's guardian consents in writing to the disclosure or if, in its discretion, the court ordering the involuntary treatment provides for such notice in the order issued pursuant to Code Section 37-3-81.1. (Ga. L. 1958, p. 697, § 19; Ga. L. 1960, p. 837, § 18; Code 1933, § 88-518, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.10, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.12, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, §§ 4, 5; Ga. L. 1981, p. 985, § 1; Ga. L. 1987, p. 3, § 37; Ga. L. 1991, p. 1059, §§ 21, 22; Ga. L. 1994, p. 1072, § 2.)

Editor's notes. — Code Section 37-3-166 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Law reviews. — For note, "Tort Liability in Georgia for the Criminal Acts of Another," see 18 Ga. L. Rev. 361 (1984).

JUDICIAL DECISIONS

Protected communications. — Georgia law has an exceedingly strict view as to what are privileged communications; not only "communications" but "admissions" are privileged; what is protected is not merely words, but "disclosures made in confidence." Mrozinski v. Pogue, 205 Ga. App. 731, 423 S.E.2d 405, cert. denied, 205 Ga. App. 901, 423 S.E.2d 405 (1992).

Records producible in child custody proceedings. — When ex-husband, in a child custody proceeding, duly subpoenaed ex-wife's clinical record from the psychiatric hospital where she had voluntarily admitted herself, that record was producible, except for the portions containing any privileged communications. Weksler v. Weksler, 173 Ga. App. 250, 325 S.E.2d 874 (1985).

Mental health records of deaf and speechless defendant. — When the mental health records of an incompetent, deaf, and speechless defendant contain both privileged communications under O.C.G.A. §§ 24-9-21(5) and 43-39-16, and nonprivileged communications, records which contain privileged material are not to be produced in response to a request for production, but the remaining documents must be produced. Annandale at Suwanee, Inc. v. Weatherly, 194 Ga. App. 803, 392 S.E.2d 27 (1990).

Psychiatric medical records are not absolutely privileged. Donalson v. State, 192 Ga. App. 37, 383 S.E.2d 588, cert. denied, 192 Ga. App. 901, 383 S.E.2d 588 (1989), 493 U.S. 1030, 110 S. Ct. 742, 107 L. Ed. 2d 760 (1990).

In an action arising from the unauthorized release of plaintiff's psychiatric records by a hospital authority, under the facts of the case, and because of the strong public policy of maintaining strict compliance with the requirements governing release of psychiatric records, the trial court erred in granting summary judgment to defendants. Sletto v. Hospital Auth., 239 Ga. App. 203, 521 S.E.2d 199 (1999).

Records held not subject to inspection. — Mental health records of a person who allegedly shot a number of people in a shopping mall were "clinical records" within the meaning of O.C.G.A. § 37-3-1(2), and therefore not subject to inspection under the Open Records Act, O.C.G.A. § 50-14-1 et seq. Southeastern Legal Found., Inc. v. Ledbetter, 260 Ga. 803, 400 S.E.2d 630 (1991).

Parent's standing to sue for unauthorized disclosure of child's records. — Father had standing to file suit for unauthorized disclosure of his minor daughter's clinical records and for unauthorized release of privileged material regarding his minor daughter. Mrozinski v. Pogue, 205 Ga. App. 731, 423 S.E.2d 405, cert. denied, 205 Ga. App. 901, 423 S.E.2d 405 (1992).

Criminal defense attorney who subpoenaed records from a psychiatric hospital was entitled to rely on the presumption that the records the attorney received from the hospital were either non-privileged or that the hospital first obtained a waiver from the patient. Karpowicz v. Hyles, 247 Ga. App. 292, 543 S.E.2d 51 (2000).

Cited in Tingle v. Harvill, 125 Ga. App. 312, 187 S.E.2d 536 (1972); Lipsey v. State, 170 Ga. App. 770, 318 S.E.2d 184 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Hospital is not authorized to release clinical records of any patient, whether alive or deceased, unless the request for such release falls within the enumerated exceptions of this statute; since a request by a relative does not fall within any of the enumerated exceptions, the law will not permit the hospital to release clinical records to such a person. 1974 Op. Att'y Gen. No. U74-86 (see O.C.G.A. § 37-3-166).

State Board of Pardons and Paroles should be given access to "Discharge Summaries" from Central State Hospital on inmates being considered for parole; such disclosure would not be a breach of confidentiality. 1973 Op. Att'y Gen. No. 73-54.

RESEARCH REFERENCES

ALR. — Testamentary capacity as affected by use of intoxicating liquor or drugs, 9 ALR3d 15.

37-3-166. (Effective January 1, 2013. See note.) Treatment of clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge.

(a) A clinical record for each patient shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged

under the laws of this state. Such examination shall be conducted on hospital premises at reasonable times determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:

(1) When the chief medical officer of the facility where the record is kept deems it essential for continued treatment, a copy of the record or parts thereof may be released to physicians or psychologists when and as necessary for the treatment of the patient;

(2) A copy of the record may be released to any person or entity designated in writing by the patient or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court;

(2.1) A copy of the record of a deceased patient or deceased former patient may be released to or in response to a valid subpoena of a coroner or medical examiner under Chapter 16 of Title 45, except for matters privileged under the laws of this state;

(3) When a patient is admitted to a facility, a copy of the record or information contained in the record from another facility, community mental health center, or private practitioner may be released to the admitting facility. When the service plan of a patient involves transfer of that patient to another facility, community mental health center, or private practitioner, a copy of the record or information contained in the record may be released to that facility, community mental health center, or private practitioner;

(4) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient;

(5) A copy of the record shall be released to the patient's attorney if the attorney so requests and the patient, or the patient's legal guardian, consents to the release;

(6) In a bona fide medical emergency, as determined by a physician treating the patient, the chief medical officer may release a copy of the record to the treating physician or to the patient's psychologist;

(7) At the request of the patient, the patient's legal guardian, or the patient's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;

(8) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this state;

(8.1) A copy of the record may be released to the legal representative of a deceased patient's estate, except for matters privileged under the laws of this state;

(9) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed as to whether a person is or has been a patient in a state facility, as well as the patient's current address, if known; and

(10) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a patient in the facility, and the name, address, and last known whereabouts of any alleged patient perpetrator.

(b) (Effective January 1, 2013. See note.) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section 24-5-501, 24-12-1, or 43-39-16.

(c) (Effective January 1, 2013. See note.) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section 24-5-501, 24-12-1, or 43-39-16.

(d) When a sheriff transports an adult involuntary patient to a facility, that sheriff may request in writing that a notice of such patient's discharge be given to the sheriff; and such notice shall be provided if such patient or the patient's guardian consents in writing to the disclosure or if, in its discretion, the court ordering the involuntary treatment provides for such notice in the order issued pursuant to Code Section 37-3-81.1. (Ga. L. 1958, p. 697, § 19; Ga. L. 1960, p. 837, § 18; Code 1933, § 88-518, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-502.10, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.12, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, §§ 4, 5; Ga. L. 1981, p. 985, § 1; Ga. L. 1987, p. 3, § 37; Ga. L. 1991, p. 1059, §§ 21, 22; Ga. L. 1994, p. 1072, § 2; Ga. L. 2011, p. 99, § 53/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-5-501, 24-12-1," for "Code Section 24-9-21, 24-9-40," at the end of subsection (b) and at the end of the last sentence of subsection (c). See editor's note for applicability.

Editor's notes. — Code Section 37-3-166 is set out twice in this Code. The first version is effective until January 1,

2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

37-3-167. Right of patient to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.

(a) Except as provided in subsection (b) of Code Section 37-3-162, every patient shall have the right to examine all medical records kept in the patient's name by the department or the facility where the patient was hospitalized or treated.

(b) Every patient shall have the right to request that any inaccurate information found in his medical record be corrected.

(c) The board shall promulgate reasonable rules and regulations to implement subsections (a) and (b) of this Code section. Nothing contained in this Code section shall be construed to require the deletion of information by the department nor constrain the department from destroying patient records after a reasonable passage of time.

(d)(1) Notwithstanding paragraphs (7) and (8) of Code Section 15-9-37 or any provisions of Article 4 of Chapter 18 of Title 50, all files and records of a court in a proceeding under this chapter since September 1, 1978, shall remain sealed and shall be open to inspection only upon order of the court issued after petition by, or notice to, the patient and subject to the provisions of Code Section 37-3-166 pertaining to the medical portions of the record.

(2) If any official or employee of any court or archival facility assists a person who is not an official or employee of that court or facility in attempting to gain access to any court record which the official or employee knows concerns examination, evaluation, treatment, or commitment for mental illness, such record was created prior to September 1, 1978, and such record contains no information concerning the patient which is ordinarily public, such as the fact that a guardianship was created, such official or employee shall seal the record if it is in the possession of the court or facility and shall inform the person seeking access that if such a record exists it is open to inspection only upon order of the court issued after petition by, or notice to, the patient and subject to the provisions of Code Section 37-3-166 pertaining to the medical portions of the record.

(3) Upon a petition for access to such files or records referred to in paragraphs (1) and (2) of this subsection, the court should allow

inspection by the person who is the subject of a record unless there are compelling reasons why it should not but should require anyone other than the person who is the subject of a court record to show compelling reasons why the record should be opened. If access is granted, the court order shall restrict dissemination of the information to certain persons or for certain purposes or both.

(4) The court may refer to such files and records referred to in paragraphs (1) and (2) of this subsection in any subsequent proceeding under this chapter concerning the same patient on condition that the files and records of such subsequent proceeding will then be sealed in accordance with this subsection. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, but without personal identifying information and under whatever conditions upon their use and distribution the court may deem proper. The court may punish by contempt any violations of any such conditions. (Code 1933, § 88-502.13, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1995, p. 612, § 2.)

Cross references. — Release of medical information generally, § 24-9-40 et seq.

Law reviews. — For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 258 (1995).

JUDICIAL DECISIONS

Procedure for obtaining records. — Former jail detainee was not entitled to mandamus to require a sheriff to provide the detainee with copies of records of the detainee's medical treatment while the detainee was incarcerated; even though the detainee had a right to the records under O.C.G.A. § 37-3-167, because the detainee had not availed oneself of regulatory procedures to secure the records, the detainee did not meet the detainee's burden of showing that the detainee lacked an adequate legal remedy. Thompson v. Paulk, 265 Ga. 479, 457 S.E.2d 665 (1995).

37-3-168. Right of patient's attorney to interview physicians, psychologists, and staff attending patient; establishment of regulations as to release of information to patient's attorney.

The patient's attorney shall have the right, at reasonable times, to interview the physician or psychologist and staff who have attended or are now attending the patient in any facility and to have the patient's records interpreted by them. The chief medical officer is authorized and directed to establish reasonable regulations to make available to the patient's attorney all such information in the possession of the facility as the attorney requires in order to advise and represent the patient concerning his hospitalization. (Code 1933, § 88-502.17, enacted by Ga.

L. 1969, p. 505, § 1; Code 1933, § 88-502.20, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1991, p. 1059, § 23.)

Cross references. — Release of medical information generally, § 24-9-40 et seq.

CHAPTER 4

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abled persons in federal hospitals and institutions located in state.
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37-4-125. (Effective January 1, 2013. See note.) Treatment of clinical records; scope of privileged communications; liability for disclosure.
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37-4-126. Right of client to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.
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Cross references. — Plea in criminal case that defendant was insane or mentally incompetent at time act committed or is mentally incompetent to stand trial, § 17-7-130 et seq. Protective services for abused, neglected, or exploited disabled adults, T. 30, C. 5. Reporting of abuse or exploitation of residents of long-term care facilities, § 31-8-80 et seq. Rights of persons residing in long-term care facilities generally, § 31-8-100 et seq.

Administrative rules and regulations. — Rules and regulations on "Mental Health and Mental Retardation and Substance Abuse," Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Chapters 290-4-1 and 290-4-3 et seq.

Law reviews. — For article, "The Olmstead Decision: The Road to Dignity and Freedom," see 26 Ga. St. U.L. Rev. 651 (2010). For article, "Olmstead's Promise and Cohousing's Potential," see 26 Ga. St. U.L. Rev. 663 (2010). For article, "From the Inside Out: Personal Perspectives of Six Georgians on Their Institutional Experiences," see 26 Ga. St. U.L. Rev. 741 (2010). For article, "The Constitutional Right to Community Services," see 26 Ga. St. U.L. Rev. 763 (2010). For article, "Reconsidering Makin v. Hawaii: The Right of Medicaid Beneficiaries to Home-Based Services as an Alternative to Institutionalization," see 26 Ga. St. U.L. Rev. 803 (2010). For article, "The Potential and Risks of Relying on Title II's Integration Mandate to Close Segregated Institutions," see 26 Ga. St. U.L. Rev. 855 (2010). For article, "Beyond Residential Segregation: The Application of Olmstead to Segregated Employment Settings," see 26 Ga. St. U.L. Rev. 875 (2010). For article, "From Almshouses to Nursing Homes and Community Care: Lessons from Medicaid's History," see 26 Ga. St. U.L. Rev. 937 (2010).

For note, "Deinstitutionalization: Georgia's Progress in Developing and Implementing an 'Effectively Working Plan' as Required by Olmstead v. L.C. ex rel," see 25 Ga. St. U.L. Rev. 699 (2009).

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Cited in Whitfield v. State, 158 Ga. App. 660, 281 S.E.2d 643 (1981); Clayton v. State, 160 Ga. App. 908, 288 S.E.2d 621 (1982); Moses v. State, 167 Ga. App. 556, 307 S.E.2d 35 (1983).

ARTICLE 1

GENERAL PROVISIONS

37-4-1. Declaration of policy.

The State of Georgia recognizes the capacity of all of its citizens, including those who are developmentally disabled, to be both personally and socially productive; and it further recognizes its obligation to provide aid in the form of a coordinated system of community facilities, programs, and services to developmentally disabled citizens so that they may achieve a greater measure of independence and fulfillment and more fully enjoy their rights of citizenship. (Code 1933, § 88-2501, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1978, p. 1826, § 1; Ga. L. 2009, p. 453, § 3-5/HB 228.)

37-4-2. Definitions.

As used in this chapter, the term:

(1) "Client" means any person with a developmental disability who seeks habilitation under this chapter or any person for whom such habilitation is sought.

(2) "Clinical record" means a written record pertaining to an individual client and includes habilitation record, progress notes, charts, admission and discharge data, and all other information which is recorded by a facility and which pertains to the client's habilitation. Such other information as may be required by rules and regulations of the board shall also be included.

(3) "Community services" means all services deemed reasonably necessary by the Department of Behavioral Health and Developmental Disabilities to provide for the education, training, habilitation, and care of developmentally disabled individuals. Such services shall include, but not be limited to, diagnostic and evaluation services, day-care and training services, work activity services, community residential services such as group family care homes, transportation services, social services, medical services, and specified home services.

(4) "Comprehensive habilitation team" means and shall consist of a group of persons with special training and experience in the assessment of needs and provision of services for developmentally disabled persons. The group shall include, at a minimum, persons qualified to provide social, psychological, medical, and other services. The department shall specify the qualifications of the individuals who comprise a comprehensive habilitation team and shall ensure

that such teams are located throughout the state so as to provide diagnostic, evaluation, and habilitation services for all citizens of Georgia.

(5) "Court" means:

(A) In the case of an individual who is 17 years of age or older, the probate court of the county of residence of the client or the county in which such client is found. Notwithstanding Code Section 15-9-13, in any case in which the judge of said probate court is unable to hear a case brought under this chapter within the time required for such hearing, said judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and shall be otherwise qualified for his or her duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such standing appointment shall serve at the pleasure of the judge making the appointment or the judge's successor in office to hear such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed with the approval of the governing authority of the county for which such person is appointed and shall be paid from the county funds of said county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served; or

(B) In the case of an individual who is under the age of 17 years, the juvenile court of the county of residence of the client or the county in which such client is found.

(6) "Facility" means any state owned or state operated institution utilized 24 hours a day for the habilitation and residence of persons who are developmentally disabled, any facility operated or utilized for such purpose by the United States Department of Veterans Affairs or any other federal agency, and any other facility within the State of Georgia approved for such purpose by the department.

(7) "Full and fair hearing" or "hearing" means a proceeding before an administrative law judge, under Code Section 37-4-42, or before a court, as defined in paragraph (5) of this Code section. The hearing may be held in a regular courtroom or in an informal setting, in the discretion of the administrative law judge or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The client shall be provided with effective assistance of counsel. If the client cannot afford counsel, the court shall appoint counsel for him or her or the administrative law judge shall have the

court appoint such counsel. The client shall have the right to confront and cross-examine witnesses and to offer evidence. The client shall have the right to subpoena witnesses and to require testimony before the administrative law judge or in court in person or by deposition from any physician upon whose evaluation the decision of the administrative law judge or the court may rest. The client shall have the right to obtain a continuance for any reasonable time for good cause shown. The administrative law judge and the court shall apply the rules of evidence applicable in civil cases. The burden of proof shall be upon the party seeking treatment of the client. The standard of proof shall be by clear and convincing evidence. At the request of the client, the public may be excluded from the hearing, and the client need not be present if the court consents; in either of these events, the record shall reflect the reason for the administrative law judge's or the court's action.

(8) "Habilitation" means the process by which program personnel help clients acquire and maintain those life skills which will enable them to cope more effectively with the demands of their own persons and of their environment and to raise the level of their physical, mental, social, and vocational abilities.

(9) "Individualized program plan" means a proposed habilitation program written in behavioral terms, developed by the comprehensive habilitation team, and specifically tailored to the needs of an individual client. Each plan shall include:

(A) A statement of the nature of the client's specific problems and specific needs;

(B) A description of intermediate and long-range habilitation goals and a projected timetable for their attainment;

(C) A description of the proposed habilitation program and its relation to habilitation goals;

(D) Identification of the facility and types of professional personnel responsible for execution of the client's habilitation program;

(E) A statement of the least restrictive environment necessary to achieve the purposes of habilitation, based upon the needs of the client;

(F) An explanation of criteria for acceptance or rejection of alternative environments for habilitation; and

(G) Proposed criteria for release of the client into less restrictive habilitation environments upon obtaining specified habilitation goals.

(10) "Least restrictive alternative," "least restrictive environment," or "least restrictive appropriate habilitation" means that

which is the least restrictive available alternative, environment, or appropriate habilitation, as applicable, within the limits of state funds specifically appropriated therefor.

(11) "Person in charge of a client's habilitation" means a superintendent or regional state hospital administrator of a facility, a case manager, or any other service provider designated by the department to have overall responsibility for implementation of a client's individualized program plan. The department shall designate such a person for each individual ordered to receive services from the department under this chapter.

(12) "Representatives" means the persons appointed as provided in Code Section 37-4-107 to receive any notice under this chapter.

(13) "Superintendent" means the chief administrative officer who has overall management responsibility at any facility, other than a regional state hospital or state owned or operated community program, receiving developmentally disabled persons under this chapter or an individual appointed as the designee of such superintendent. (Code 1933, § 88-2502, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1972, p. 700, § 3; Ga. L. 1978, p. 1826, § 1; Code 1933, § 88-2503.12, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 734, § 1; Ga. L. 1986, p. 1092, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 94, § 37; Ga. L. 2002, p. 1324, § 1-12; Ga. L. 2009, p. 453, § 3-13/HB 228; Ga. L. 2011, p. 337, § 1/HB 324.)

The 2011 amendment, effective July 1, 2011, in paragraph (4), deleted "'evaluation team' or 'comprehensive'" following "'Comprehensive" at the beginning, substituted "persons. The group" for "persons, which group" at the end of the first sentence, and deleted "a comprehensive evaluation team or" following "who comprise" in the third sentence; deleted former paragraphs (6) and (7), relating to developmentally disabled persons in need of community services and requiring temporary and immediate care; redesignated former paragraphs (8) through (15) as present paragraphs (6) through (13), respectively; in paragraph (7), substituted "administrative law judge" for "hearing examiner" throughout, substituted "an administrative law judge" for "a hearing examiner" in the first sentence, and substituted "administrative law judge's" for "hearing examiner's" in the last sentence; and substituted "habilitation team" for "evaluation team" in the first sentence of the introductory language of paragraph (9).

37-4-3. Authority of board to issue regulations; powers of department generally.

(a) The board shall issue regulations to implement this chapter in accordance with the intent of this chapter to safeguard the rights of developmentally disabled persons.

(b) In addition to the other powers provided by this chapter, the department shall have the authority:

(1) To enforce the regulations issued by the board;

(2) To prescribe the forms of applications, records, medical certificates, and any other forms required or used under this chapter and the information required to be contained therein;

(3) To require such reports from any facility as it may find necessary to the performance of its duties or functions;

(4) To visit facilities regularly to review the procedures applied to all clients;

(5) To determine the care, treatment, education, habilitation, or other specialized services being given all clients;

(6) To investigate complaints and make reports and recommendations relative to the same; and

(7) To make effective such procedures and orders as may be appropriate to carry out this chapter.

Notwithstanding the powers granted to the department under this Code section, the requirements of this Code section as to determination of care, treatment, education, habilitation, or other specialized services of clients and the investigation of complaints shall not apply to clients who are being cared for in a facility operated by or under the control of the United States Department of Veterans Affairs or any other federal agency. (Code 1933, § 88-2511, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2509.1, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 2009, p. 453, § 3-5/HB 228.)

37-4-4. Coordination of training programs for the developmentally disabled.

The State Department of Education is authorized and directed to coordinate its program for training the developmentally disabled with the programs of the Department of Behavioral Health and Developmental Disabilities. The Department of Education is authorized and empowered to expend funds appropriated to or available to it for such purposes. (Ga. L. 1963, p. 259, § 5; Ga. L. 1966, p. 374, § 7; Ga. L. 2009, p. 453, §§ 3-2, 3-5/HB 228.)

Cross references. — Offering of instructional services under the "Adequate Program for Education in Georgia Act," § 20-2-150 et seq.

37-4-5. Validity of hospitalization orders entered before September 1, 1978; establishment of regulations authorizing continued care for clients receiving services pursuant to orders entered before September 1, 1978; validity of hospitalization orders entered before July 1, 2011.

(a) No hospitalization of a developmentally disabled person lawful before September 1, 1978, shall be deemed unlawful because of the enactment of this chapter. The board is authorized to establish reasonable regulations to require that the superintendent or regional state hospital administrator of each facility where developmentally disabled persons are in residence apply under Code Section 37-4-42 for an order authorizing continued care of a client for whom such care is necessary and who was initially hospitalized under an order of a court prior to September 1, 1978. Such prior orders of hospitalization entered by the courts, unless superseded at an earlier date by an order under this chapter, or unless such prior orders expire under their own terms at an earlier date, shall remain valid until 12 months following September 1, 1978, after which all such orders shall be null and void and of no effect.

(b) No hospitalization of a person with developmental disabilities which was lawful before July 1, 2011, shall be deemed unlawful because of the repeal of former Code sections under Article 2 of this chapter. (Code 1933, § 88-2509.6, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2002, p. 1324, § 1-19; Ga. L. 2009, p. 453, § 3-5/HB 228; Ga. L. 2011, p. 337, § 2/HB 324.)

The 2011 amendment, effective July 1, 2011, designated the existing provisions as subsection (a) and added subsection (b).

37-4-6. Immunity from liability for actions taken in good faith compliance with admission and discharge provisions of chapter.

Any physician, psychologist, peace officer, attorney, or health official or any hospital official, agent, or other person employed by a private hospital or at a facility operated by the state, by a political subdivision of the state, or by a hospital authority created pursuant to the "Hospital Authorities Law," Article 4 of Chapter 7 of Title 31 who acts in good faith in compliance with the admission and discharge provisions of this chapter shall be immune from civil or criminal liability for his actions in connection with the admission of a client to a facility or the discharge of a client from a facility. (Code 1933, § 88-2503.23, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1991, p. 1059, § 24.)

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 121 (1992).

RESEARCH REFERENCES

ALR. — Liability of mental care facility for suicide of patient or former patient, 19 ALR4th 7.

37-4-7. Apprehension by peace officer of mentally retarded person who leaves facility without permission.

If, during the period of habilitation authorized by this chapter a client escapes or otherwise leaves a facility without permission, the facility may advise any peace officer that the client has escaped or otherwise left the facility without permission; and the peace officer shall be authorized to take said client into custody and return him to such facility. (Code 1933, § 88-2509.9, enacted by Ga. L. 1979, p. 734, § 8.)

37-4-8. Approval of private facilities; powers and duties of private facilities; right to deny admission.

Any private facility within this state may be approved as a facility for the habilitation of developmentally disabled persons by the department at the request of or with the consent of the governing officers of such private facility. When so approved, the private facility shall have all powers given to the corresponding type of facility under this chapter for evaluation and habilitation and shall have all duties and obligations of such facilities imposed by this chapter, except that any such private facility may decline to accept any client who is unable to pay it for habilitation services or for whom it has no available space. (Code 1933, § 88-2509.5, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2009, p. 453, § 3-5/HB 228.)

RESEARCH REFERENCES

ALR. — Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons, 32 ALR4th 1018.

Validity, construction, and effect of statute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill, 51 ALR4th 1096.

ARTICLE 2

PROCEDURES FOR OBTAINING SERVICES FROM THE DEPARTMENT

PART 1

GENERAL PROVISIONS

37-4-20 through 37-4-22.

Reserved. Repealed by Ga. L. 2011, p. 337, § 3/HB 324, effective July 1, 2011.

Code Commission notes. — Former Code Section 37-4-21 was repealed effective July 1, 2011, by operation of Ga. L. 2011, p. 337, § 3. However, Ga. L. 2011, p. 227, § 25, effective July 1, 2011, purported to amend Code Section 37-4-21 to substitute "a personal care home, as defined in subsection (a) of Code Section 31-7-12, or an assisted living community, as defined in Code Section 31-7-12.2" for "or a personal care home, as defined in Code Section 31-7-12" in the last sentence of subsection (c). For effect of subsequent amendment of a repealed statute, see Lampkin v. Pike, 115 Ga. 827 (1902).

Editor's notes. — These Code sections were based on Code 1933, §§ 88-2504.1 through 88-2504.3, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 734, § 5; Ga. L. 1980, p. 1160, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 2002, p. 1324, § 1-18; Ga. L. 2009, p. 453, § 3-5/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387.

PART 2

COURT ORDERED SERVICES

37-4-40. Filing petition with court for according of program of services to developmentally disabled person; order for examination of person by comprehensive evaluation team; report by team; petition hearing; procedure upon finding that department services are necessary.

Reserved. Repealed by Ga. L. 2011, p. 337, § 4/HB 324, effective July 1, 2011.

Editor's notes. — This Code section was based on Ga. L. 1919, p. 377, § 4; Ga. L. 1931, p. 7, § 41; Code 1933, § 35-304; Code 1933, §§ 88-2506, 88-2507, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2504, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 734, § 4; Ga. L. 1982, p. 3, § 37; Ga. L. 1985, p. 926, § 1; Ga. L. 1992, p. 2531, § 1; Ga. L. 2002, p. 1324, § 1-18; Ga. L. 2009, p. 453, §§ 3-5, 3-14/HB 228.

37-4-40.1 through 37-4-40.5.

Reserved. Repealed by Ga. L. 2011, p. 337, § 5/HB 324, effective July 1, 2011.

Editor's notes. — These Code sections were based on Code 1981, § 37-4-40.1 through 37-4-40.5, enacted by Ga. L. 1986, p. 1092, § 2; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 1902, § 14; Ga. L. 1993, p. 1445, § 17.4; Ga. L. 2002, p. 1324, § 1-18; Ga. L. 2009, p. 453, §§ 3-5/HB 228, 3-6/HB 228.

37-4-41. Procedure upon failure of or client's noncompliance with court ordered habilitation program.

Reserved. Repealed by Ga. L. 2011, p. 337, § 4/HB 324, effective July 1, 2011.

Editor's notes. — This Code section was based on Code 1933, § 88-2505, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2002, p. 1324, § 1-18.

37-4-42. Procedure for continuation of court ordered habilitation.

(a) If it is necessary to continue habilitation of a client beyond the end of the period during which the facility is currently authorized by order of a court or of an administrative law judge to retain the client, the superintendent or regional state hospital administrator, prior to the expiration of the period, shall seek an order authorizing such continued habilitation in the manner provided in this Code section.

(b) A Committee for Continued Habilitation Review shall be established by the superintendent or regional state hospital administrator of each facility and shall consist of not less than five persons who meet the same requirements as those persons eligible to be members of the comprehensive habilitation team as defined in Code Section 37-4-2. The committee may conduct its meetings with a quorum of any three members. The function of this committee shall be to review and evaluate the updated individualized program plan and to report to the superintendent or regional state hospital administrator its recommendations concerning the client's need for continued habilitation. No person who has responsibility for the habilitation of the individual client for whom continued habilitation is requested shall serve on any committee which reviews such individual's case.

(c) If the superintendent or regional state hospital administrator desires to seek an order under this Code section authorizing continued habilitation for up to 12 months beyond the expiration of the currently authorized period of habilitation, he or she shall first file a notice of such intended action with the Committee for Continued Habilitation Review, which shall be forwarded to the committee at least 60 days prior to the expiration of that period.

(d) Within ten days of the date of the notice, the committee shall meet to consider the matter of the superintendent's or regional state hospital administrator's intention to seek an order for continued

habilitation. Prior to the committee's meeting, the client and his or her representatives shall be notified of the following: the purpose of such meeting, the time and place of such meeting, their right to be present at such meeting, and their right to present any alternative individualized program plan secured at their expense. In those cases in which the client will not or cannot appear, at least one member of the committee will make all reasonable efforts to interview the client and report to the committee. An updated individualized program plan for the client shall be presented to the committee. The committee shall report to the superintendent or regional state hospital administrator or his or her designee, other than the attending physician or a member of the committee, its written recommendations along with any minority recommendations which may also be submitted. Such report shall specify whether or not the client is a developmentally disabled person requiring continued habilitation and whether continued habilitation is the least restrictive alternative available.

(e) If after considering the committee's recommendations and minority recommendations, if any, the superintendent or regional state hospital administrator or his or her designee, other than the attending physician or a member of the committee, determines that the client is not a developmentally disabled person requiring continued habilitation, the client shall be discharged from the facility pursuant to subsection (b) of Code Section 37-4-44.

(f) If after considering the committee's recommendations and minority recommendations, if any, the superintendent or regional state hospital administrator or his or her designee, other than the client's attending physician or a member of the committee, determines that the client is a developmentally disabled person requiring continued habilitation, he or she shall, within ten days after receiving the committee's recommendations, serve a petition for an order authorizing continued habilitation along with copies of the updated individualized program plan and the committee's report on the designated office within the department and shall also serve such petition along with a copy of the updated individualized program plan on the client. The petition shall contain a plain and simple statement that the client or his or her representatives may file a request for a hearing with the Office of State Administrative Hearings within 15 days after service of the petition, that the client has a right to counsel at the hearing, that the client or his or her representatives may apply immediately to the administrative law judge to have counsel appointed if the client cannot afford counsel, and that the administrative law judge will appoint counsel for the client unless the client indicates in writing that he or she will have retained counsel by the time set for hearing or does not desire to be represented by counsel.

(g) If a hearing is not requested by the client or the representatives within 15 days after service of the petition on the client and his or her

representatives, the administrative law judge shall make an independent review of the committee's report, the updated individualized program plan, and the petition. If he or she concludes that continued habilitation may not be necessary or if he or she finds any member of the committee so concluded, then he or she shall order that a hearing be held pursuant to subsection (h) of this Code section. If he or she concludes that continued habilitation is necessary, then he or she shall order continued habilitation for a period not to exceed one year.

(h) If a hearing is requested within 15 days after service of the petition on the client and his or her representatives or if the administrative law judge orders a hearing pursuant to subsection (g) of this Code section, the administrative law judge shall set a time and place for the hearing to be held within 25 days of the time the administrative law judge receives the request, but, in any event, no later than the day on which the current order for habilitation expires. Notice of the hearing shall be served on the client, his or her representatives, the facility, and, when appropriate, on counsel for the client. The administrative law judge, within his or her discretion, may grant a change of venue for the convenience of parties or witnesses. Such hearing shall be a full and fair hearing, except that the client's attorney, when the client is unable to attend the hearing and is incapable of consenting to a waiver of his or her appearance, may move that the client not be required to appear; however, the record shall reflect the reasons for the administrative law judge's actions.

(i) After such hearing, the administrative law judge may order the client's continued habilitation for a period not to exceed one year, subject to the power of the superintendent or regional state hospital administrator to discharge the client under subsection (b) of Code Section 37-4-44; provided, however, that if the administrative law judge finds that the client is not developmentally disabled or is not in need of care, training, education, habilitation, or other specialized services which the client is then receiving, the administrative law judge shall dismiss the petition. (Code 1933, § 88-2507, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 734, § 7; Ga. L. 1985, p. 926, § 2; Ga. L. 2002, p. 1324, § 1-18; Ga. L. 2009, p. 453, § 3-5/HB 228; Ga. L. 2011, p. 337, § 6/HB 324.)

The 2011 amendment, effective July 1, 2011, inserted "superintendent or", inserted "or her", and inserted "or she" throughout this Code section; in subsection (g) and throughout subsection (h), substituted "administrative law judge" for "hearing examiner"; in subsection (a), substituted "authorized by order of a court or of an administrative law judge" for "authorized under this chapter"; in subsection (b), substituted "habilitation team" for "evaluation team" in the first sentence; in subsection (c), deleted "notice" preceding "shall be forwarded" near the end; in subsection (d), inserted "superintendent's or" in the first sentence, substituted "Such report shall" for "Such report will" in the last sentence; in subsection (f), substituted "the Office of State Administrative Hearings" for "a

hearing examiner appointed pursuant to Code Section 37-4-43" and twice substituted "administrative law judge" for "court" in the last sentence; in subsection (h), substituted "administrative law judge's" for "hearing examiner's" near the end of the last sentence, and designated the last sentence of subsection (h) as present subsection (i); in subsection (i), substituted "administrative law judge" for "hearing examiner may issue any order which the court is authorized to issue under subsection (e) of Code Section 37-4-40, provided that the hearing examiner", and added the proviso; and deleted former subsection (i), which read: "The hearing examiner for a client who was admitted under the jurisdiction of the juvenile court and who reaches the age of 17 without having had a full and fair hearing pursuant to any provisions of this chapter or without having waived such hearing shall order that a hearing be held pursuant to subsection (h) of this Code section."

Law reviews. — For comment, "Involuntary Commitment of People with Mental Retardation: Ensuring All of Georgia's Citizens Receive Adequate Procedural Due Process," see 58 Mercer L. Rev. 711 (2007).

JUDICIAL DECISIONS

Continuing presumption of insanity follows prior judicial determination. — When the defendant in a release hearing had been examined three separate times to determine mental competency in relation to a criminal trial, and there had been a judicial determination that the defendant not mentally responsible for the defendant's crimes and apparently not competent to stand trial, there existed a continuing presumption of insanity at the time of the release hearing. Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979).

When prior determination based on clear and convincing evidence, as when the trial court had for the court's consideration the evidence of numerous prior committals for psychiatric treatment, evidence that following release from such structured treatment, the defendant had suffered decompensation and had often become violent and aggressive toward oneself or others when not undergoing a regular course of treatment and medication, even though the state did not affirmatively offer it or any additional evidence at the release hearing. Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979).

Precepts of due process require a clear and convincing standard of proof in a civil proceeding to commit an individual to a mental hospital involuntarily. Pitts v. State, 151 Ga. App. 691, 261 S.E.2d 435 (1979).

Cited in Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980); Benham v. Edwards, 501 F. Supp. 1050 (N.D. Ga. 1980).

OPINIONS OF THE ATTORNEY GENERAL

Prerequisites before commitment of mentally retarded child to department. — Pursuant to former Code 1933, § 24A-2801 (see O.C.G.A. § 15-11-40), a mentally retarded child may not properly be committed to the Department of Human Resources unless the department first advises the court that the department has appropriate facilities available to serve that particular child; similarly, a mentally ill child may not be committed unless the child is in need of hospitalization because the child is likely to injure oneself or others if not hospitalized or because, due to the child's mental illness, the child is incapable of caring for the child's physical health and safety. 1976 Op. Att'y Gen. No. 76-111.

37-4-43. Appointment of hearing examiners for hearings as to continued habilitation; powers of hearing examiners

generally; issuance of subpoenas; appointment of counsel.

Reserved. Repealed by Ga. L. 2011, p. 337, § 4/HB 324, effective July 1, 2011.

Editor's notes. — This Code section was based on Code 1933, § 88-2506, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 734, § 6.

37-4-44. Periodic review of individualized program plan; discharge or transfer to another facility upon change in client's needs; notice of discharge or transfer.

(a) Each individualized program plan shall be reviewed at regular intervals to determine the client's progress toward the stated goals and objectives of the plan and to determine whether the plan should be modified because of the client's present level of performance. These reviews should be based upon relevant progress notes in the client's clinical record and upon other related information, and a reasonable effort shall be made to obtain and utilize input from the client and his representatives.

(b) Any time a client is found by the person in charge of the client's habilitation no longer to be in need of services from the department, the client shall be discharged.

(c) At least 14 days before discharge of the client or transfer of the client pursuant to a modification of his program plan, notice of such action shall be given to the client, his representatives, and, if the client's program plan was ordered by a court, to the court which entered such order. (Ga. L. 1919, p. 377, § 6; Ga. L. 1931, p. 7, § 41; Code 1933, § 35-306; Code 1933, § 88-2509, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2508, enacted by Ga. L. 1978, p. 1826, § 1.)

ARTICLE 3

PLACEMENT, TRANSFER, AND TRANSPORTATION OF DEVELOPMENTALLY DISABLED PERSONS UNDERGOING HABILITATION, GENERALLY

37-4-60. Designation of facility to which client to be admitted; transfers of clients between private and state owned facilities; transfers of clients generally.

(a) The department may designate the state owned or state operated facility to which a client is admitted under this chapter. The department may instead designate a private facility, approved under Code Section 37-4-8, to which the client is to be admitted, if the department

has obtained the prior agreement of the private facility and of the client or his representative.

(b) A client who is receiving habilitation at a state owned or state operated facility under this chapter may apply for a transfer at his own expense to a private facility approved under Code Section 37-4-8, if he is able to pay for habilitation at such private facility. If the private facility agrees to accept the client, the department shall transfer the client to that facility.

(c) If a private facility requests the department to take custody of a client who has been receiving habilitation therein under this chapter and if the client meets the criteria for admission under this chapter, then the department shall accept the client and designate the state owned or state operated facility to which the client shall be admitted.

(d) When the needs of the client or efficient utilization of any facility requires, a client may be transferred from one facility to another, and notice of and the reasons for such transfer shall be provided pursuant to subsection (c) of Code Section 37-4-44. (Ga. L. 1956, p. 728, § 1; Code 1933, § 88-2510, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, §§ 88-2503.16, 88-2509.5, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1985, p. 149, § 37.)

37-4-61. Transportation of clients generally.

(a) The governing authority of the county where the client is found or located shall arrange for initial emergency transport of a client to an emergency receiving facility. Except as otherwise authorized under subsection (b) of this Code section, the governing authority of the county of the client's residence shall arrange for all required transportation for developmental disability services subsequent to the initial transport. The type of vehicle employed shall be determined by the governing authority of the county, provided that, whenever possible, marked vehicles normally used for the transportation of criminals or those accused of crimes shall not be used for the transportation of clients. The court, upon the request of the community developmental disability program, shall order the sheriff to transport the client in such manner as the client's condition demands. At any time such community developmental disability program is satisfied that the client can be transported safely by family members or friends, such private transportation shall be encouraged and authorized. In nonemergency situations, no female client shall be transported at any time without another female in attendance who is not a client, unless such female client is accompanied by her husband, father, adult brother, or adult son.

(b) Notwithstanding the provisions of subsection (a) of this Code section, when a client is under the care of a facility, the facility shall

have the discretion to determine the type of vehicle to safely transport the client and to arrange for such transportation without the need to obtain the prior approval of the governing authority of the county of the client's residence, the court, or the community developmental disability program. This subsection shall not prevent the facility from requesting and receiving transportation services from the governing authority of the county of the client's residence and shall not relieve the county sheriff of the duty of providing transportation. Persons providing transportation are authorized to transport a patient from a sending facility to a receiving facility but shall not release the client under any circumstances except into the custody of the receiving facility. The use of physical restraints to ensure the safe transport of the client shall comply with the requirements of Code Section 37-4-124. When transportation is not provided by the county sheriff, the expense of such transportation shall not be billed to the county governing authority but may be billed to the client and, unless agreed to in writing by the facility, shall not be billed to or considered an obligation of the facility. (Code 1933, § 88-2503.17, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1993, p. 1445, § 17.5; Ga. L. 2002, p. 1067, § 2; Ga. L. 2009, p. 453, § 3-6/HB 228.)

Cross references. — Manner of marking of law enforcement and emergency vehicles, § 40-8-90 et seq.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

37-4-62. Transfer of clients to custody of federal agencies for services; retention of jurisdiction over clients by state courts; jurisdiction over developmentally disabled persons in federal hospitals and institutions located in state.

(a) If a client ordered to receive services from the department as a resident in a facility pursuant to this chapter is eligible for hospital care or treatment by the United States Department of Veterans Affairs or any other federal agency, the department, upon receipt of a certificate

from such hospital showing that facilities are available and that the client is eligible for care, treatment, education, habilitation, or other specialized services therein, may transfer him to the custody of such agency. No such transfer shall occur if it would be harmful to or less effective in the client's habilitation or if it does not meet the requirements of the client's individualized program plan. When any such person is admitted under this Code section to any such facility within or outside the state, he shall be subject to the rules and regulations of such agency. The superintendent of any facility operated by such agency in which the individual becomes a resident shall, with respect to such individual, be vested with the same powers and duties as the superintendent of facilities within this state with respect to all matters under this chapter. Jurisdiction is retained in the appropriate courts of this state at any time to inquire into the condition of such an individual, to determine the necessity for continuance of his care in said facility, and to order his release; and every such person shall retain the rights delineated in Code Section 37-4-100. Every transfer of a client by the department pursuant to this Code section is so conditioned.

(b) An order of a court of competent jurisdiction of another state, territory, or possession, or of the District of Columbia authorizing hospitalization of a developmentally disabled person by any agency of the United States shall have the same force and effect as to the person while in this state as in the jurisdiction in which is situated the court entering the order; and the courts of the state, territory, possession, or district issuing such order shall be deemed to have retained jurisdiction of the person so hospitalized for the purpose of inquiring into his condition and determining the necessity for continuance of his hospitalization as is provided in subsection (a) of this Code section with respect to clients ordered to receive services from the department by the courts of this state. Consent is given to the application of the law of the state, territory, possession, or district in which is located the court issuing the order for hospitalization, with respect to the authority of the superintendent of any hospital or institution operated in this state by the United States Department of Veterans Affairs or any other federal agency, to retain custody, transfer, furlough, or discharge the person therein hospitalized. (Code 1933, § 88-2509.4, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 2009, p. 453, § 3-5/HB 228.)

37-4-63. Procedure for transfer of Georgia residents from out-of-state facilities to Georgia facilities.

Upon application to the department by a parent, spouse, next of kin, or guardian or by an agency of another state in which a person is hospitalized, the person shall be eligible to be admitted to a facility in the State of Georgia if found by the department to be a legal resident of

Georgia. The department shall designate a facility to which such person is to be transported at no expense to the State of Georgia. The regional state hospital administrator of such facility and the next of kin or guardian of the person shall be notified of this action. The regional state hospital administrator shall be authorized to accept the person for a period not to exceed five days, unless prior to the expiration of such period proceedings have been initiated under Code Section 37-4-42 for an order to receive services from the department. After a thorough physical and mental examination has been made by the medical staff of such facility, the regional state hospital administrator of the facility or his designee is authorized to initiate a petition under this chapter, if this is necessary. Such application shall be forwarded to the court of the county in which that facility is located for action pursuant to this chapter in relation thereto. (Code 1933, § 88-2509.8, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2002, p. 1324, § 1-18.)

37-4-64. Procedure upon discovery that a client receiving court ordered services from a Georgia facility is not a resident.

If a client who is a resident in a facility is discovered not to be a resident of Georgia, the regional state hospital administrator of the facility in which the client is a resident shall seek his transfer to the custody of authorities of the state of his residence or to a publicly owned or publicly operated facility in that state. This Code section shall not apply to persons who are in residence at any facility operated by or under the control of the United States Department of Veterans Affairs or any other federal agency. (Code 1933, § 88-2509.3, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 2002, p. 1324, § 1-18.)

Cross references. — Rights of citizens of other states while in Georgia generally, § 1-2-9.

ARTICLE 4

PAYMENT OF EXPENSES OF CARE AND TRANSPORTATION OF DEVELOPMENTALLY DISABLED PERSONS UNDERGOING HABILITATION, GENERALLY

37-4-80. Effect of inability to pay on right to habilitation services.

It is the policy of this state that no person shall be denied habilitation services for a developmental disability nor shall services be delayed at a facility of the state or a political subdivision of the state because of

inability to pay for such habilitation services. (Code 1933, § 88-2503.3, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2009, p. 453, § 3-7/HB 228.)

37-4-81. Liability for expenses for transporting, examining, and caring for clients.

(a) The responsibility for paying the expenses for transporting, examining, and caring for clients, which expenses are not provided for under Chapter 9 of this title, relating to the payment of costs of care of persons admitted to state institutions under the department, shall be in the following order:

(1) The client or his estate;

(2) Persons legally obligated or legally responsible for the support of the client;

(3) The county of the client's legal residence;

(4) The department, when the General Assembly appropriates funds for such purpose.

(b) The department is authorized to issue rules and regulations governing the provisions of this Code section as it relates to the department. (Code 1933, § 88-2508, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2509.7, enacted by Ga. L. 1978, p. 1826, § 1.)

Cross references. — Payment of costs of hospital care for the indigent, § 31-8-1 et seq. Medical assistance generally, § 49-4-140 et seq.

37-4-82. Payment of expenses incurred in connection with hearings held under this chapter.

(a) Except as provided in this Code section, the expenses of any hearing held under this chapter by a court or by an administrative law judge, including attorneys' fees authorized by paragraph (1) of subsection (b) of this Code section and including expenses authorized by paragraph (3) of subsection (b) of this Code section, shall be paid by the county in which the client has his or her residence or, if the client is a transient, by the county in which the client was initially taken into the custody of the state. Payment by such county of the hearing expenses shall only be required if the person who actually presides over the hearing executes an affidavit or includes a statement in his or her final order relating to the hearing that the assets of the client, his or her estate, and any persons legally obligated to support the client appear to be insufficient to defray such expenses, based upon all relevant information available to the person who actually presides over the hearing. Such affidavit or statement may include the client's name, address, and age. The cost on appeal to the appropriate court shall be the same as provided for in other appeals from the probate and juvenile courts.

(b) Expenses of any hearing held under this chapter shall include:

(1) The fee to be paid to an attorney appointed under this chapter to represent a patient at such hearing. Such fee shall be as agreed between the attorney and the appointing court but shall not exceed an amount determined under the fee schedule followed by the county when computing the fees to be paid to an attorney who has been appointed to represent an indigent criminal defendant, plus actual expenses which an attorney may incur and which have been approved by the court holding the hearing. In exceptional circumstances, the attorney may apply to the superior court of the judicial circuit in which the hearing was held for an order granting reasonable fees in excess of the amounts specified in this paragraph;

(2) The fee to be paid to the court to defray the cost of clerical help and the cost of any additional office space and equipment required for the conduct of such hearing. In hearings conducted pursuant to Code Section 37-4-42 such fee shall be $20.00, and in all other hearings under this chapter such fee shall be $40.00, excluding attorneys' fees and expenses of the administrative law judge; and

(3) The fee to be paid to an administrative law judge appointed pursuant to subparagraph (A) of paragraph (5) of Code Section 37-4-2 to conduct a hearing. Such fee shall be as agreed between the administrative law judge and the appointing court, but shall not exceed an amount determined under the fee schedule followed by the county when computing the fees to be paid to an attorney who has been appointed to represent an indigent criminal defendant plus actual expenses which the administrative law judge may incur and which have been approved by the court holding the hearing. In exceptional circumstances, the administrative law judge may apply to the superior court of the judicial circuit in which the hearing was held for an order granting reasonable fees in excess of the amounts specified in this paragraph. The $40.00 court cost authorized by paragraph (2) of this subsection shall also be authorized to defray the cost of clerical help and additional office space and equipment required for the conduct of such hearings. (Code 1933, § 88-2508, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2509.2, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 1042, § 3; Ga. L. 1985, p. 875, § 2; Ga. L. 2011, p. 337, § 7/HB 324.)

The 2011 amendment, effective July 1, 2011, in subsection (a), inserted "or her" in the first and second sentences, in the first sentence, substituted "an administrative law judge" for "a hearing examiner" near the beginning, and deleted "hearing officer" following "and including" near the middle; substituted "administrative law judge" for "hearing officer" in paragraph (b)(2) and throughout paragraph (b)(3); deleted ", which fee shall be" following "paid to the court" in the first sentence of paragraph (b)(2); and substituted "an administrative law judge" for "a hearing officer" near the beginning of the first sentence of paragraph (b)(3).

ARTICLE 5

RIGHTS AND PRIVILEGES OF DEVELOPMENTALLY DISABLED PERSONS UNDERGOING HABILITATION, THEIR REPRESENTATIVES, ETC., GENERALLY

Cross references. — Tolling of statute of limitations due to mental retardation of person to whom cause of action accrues, § 9-3-90.

Part 1

General Provisions

37-4-100. Retention of rights and privileges by clients generally; right to due process.

Clients shall retain all rights and privileges granted other persons or citizens. Notwithstanding any other provision of law to the contrary, no person who is receiving or has received services for a developmental disability shall be deprived of any civil, political, personal, or property rights or be considered legally incompetent for any purpose without due process of law. (Code 1933, § 88-2503.1, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2009, p. 453, § 3-7/HB 228.)

Cross references. — Rights of persons generally, T. 1, C. 2. Capacity of mentally retarded persons to enter into contracts, § 13-3-24. Sterilization of mentally incompetent persons, § 31-20-3. Testamentary capacity, § 53-4-10 et seq.

RESEARCH REFERENCES

ALR. — Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 ALR3d 854.

37-4-101. Clients' right to legal counsel.

It shall be the responsibility of the department to see that every client is given the opportunity to secure legal counsel at his own expense to represent him in connection with private, personal, domestic, business, civil, criminal, and all other legal matters in which he may be involved during habilitation in a facility. (Code 1933, § 88-2503.15, enacted by Ga. L. 1978, p. 1826, § 1.)

Cross references. — Right to legal counsel generally, U.S. Const., amend. 6, and Ga. Const., 1983, Art. I, Sec. I, Para. XI.

RESEARCH REFERENCES

ALR. — Accused's right to represent himself in state criminal proceedings — modern state cases, 98 ALR3d 13.

37-4-102. Right of clients to communicate with persons outside facility and to receive visitors; treatment of client correspondence; establishment of regulations governing visitation and telephone usage.

(a) Each client in a facility shall have the right to communicate freely and privately with persons outside the facility and to receive visitors inside the facility.

(b) Except as otherwise provided in this Code section, each client shall be allowed to receive and send sealed, unopened mail; and no client's incoming or outgoing mail shall be opened, delayed, held, or censored by the facility.

(c) If there are reasonable grounds to believe that incoming mail contains items or substances which may be dangerous to the client or others, the superintendent or regional state hospital administrator may direct reasonable examination of such mail and, after examination, may regulate the disposition of such items or substances therein found. All writings must be presented to the client within 24 hours of inspection.

(d) The superintendent or regional state hospital administrator may apply to the court for a temporary order to restrict outgoing mail. If the court determines that probable cause exists that such mail is dangerous to the client or others, the court may order such mail temporarily restricted, provided that a full and fair hearing shall be held within five days after the issuance of such temporary order to determine whether or not an order of restriction for an extended time shall issue. In no event shall mail be restricted pursuant to such temporary order for more than five days after the date of the temporary order. A full and fair hearing shall be held after the issuance of the temporary order. If, at such hearing, the client's outgoing mail is determined to be dangerous to the patient or others, the court may order such mail restricted for an extended period not to exceed 30 days. Restrictions for extended periods may be renewed for additional periods not to exceed 30 days each, provided that no such restriction shall be renewed except upon a renewed finding, at another full and fair hearing for each such renewal, that such mail is dangerous to the client or others.

(e) If an injunction against the sending of mail by a client is issued by a court, the superintendent or regional state hospital administrator shall restrict outgoing mail as provided by the order of the court.

(f) No restrictions of either incoming or outgoing mail under subsection (c) or (d) of this Code section shall exceed a period of five days, notwithstanding the authority to restrict such mail for longer periods, provided that such restrictions may be continued as necessary for periods not to exceed five days each upon determination by the superintendent or regional state hospital administrator, prior to each continuation, that such mail continues to be dangerous to the client or others; provided, further, that, in the case of outgoing mail, such continuation periods in the aggregate shall not exceed the restriction period authorized in the court order.

(g) Correspondence of the client with his attorney shall not be restricted in any manner under this Code section. Correspondence of the client with public officials shall not be restricted in any manner under subsection (c) of this Code section.

(h) Each time a client's incoming mail is ordered examined by the superintendent or regional state hospital administrator and each time a client's outgoing mail is ordered examined by a temporary court order, written notice of such order and notice of a right to a full and fair hearing within five days after such temporary court order shall be served on the client and his representatives as provided in Code Section 37-4-107.

(i) The circumstances surrounding the examination of any mail under subsection (c), (d), (e), or (f) of this Code section shall be recorded on the client's clinical record.

(j) The superintendent or regional state hospital administrator is authorized to establish reasonable regulations governing visitors, visiting hours, and the use of telephones by clients. (Code 1933, § 88-2503.7, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2002, p. 1324, § 1-19.)

37-4-103. Clients' rights in regard to personal effects; liability of facility's employees and staff members for loss of or damage to clients' personal effects.

A client's rights to his personal effects shall be respected. The superintendent or regional state hospital administrator may take temporary custody of such effects when required for medical reasons. The facility shall make reasonable efforts to assure the safety of the client's belongings, but no employee or staff member shall be responsible for loss of or damage to such property where reasonable safety precautions have been taken. (Code 1933, § 88-2503.8, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2002, p. 1324, § 1-19.)

37-4-104. Clients' right to vote.

Each client in a facility who is eligible to vote shall be given his right to vote in primary, special, and general elections and in referendums. The superintendent or regional state hospital administrator of each facility shall permit and reasonably assist clients:

(1) To obtain voter registration forms, applications for absentee ballots, and absentee ballots;

(2) To comply with other requirements which are prerequisite for voting; and

(3) To vote by absentee ballot if necessary. (Code 1933, § 88-2503.9, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1995, p. 10, § 37; Ga. L. 2002, p. 1324, § 1-19.)

Cross references. — Right to elective franchise generally, U.S. Const., amend. 15; Ga. Const., 1983, Art. II, Sec. I, Para. III; and § 1-2-6. Absentee voting, § 21-2-380 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Right of the mentally retarded to vote generally. — There is no statutory or constitutional provision which would permit removal of an elector from the electors' list on the ground that the elector is mentally retarded. In fact, under O.C.G.A. § 37-4-104, the contrary is true with respect to those mentally retarded electors receiving treatment. 1981 Op. Att'y Gen. No. 81-11.

37-4-105. Employment of clients outside facilities.

If a client wishes to be employed outside a facility and if such employment will aid in the client's habilitation, he shall be assisted in his efforts to secure suitable employment and all benefits flowing from such employment. The department shall encourage such employment of clients and shall promote the training of clients for gainful employment after discharge. All benefits of such employment shall accrue solely to the client. (Code 1933, § 88-2503.10, enacted by Ga. L. 1978, p. 1826, § 1.)

37-4-106. Education of children who are clients.

The rights of any child receiving habilitation in a facility to an appropriate education at public expense shall not be abridged during hospitalization, and the special educational needs of each child shall be individually considered and respected. The department and the State Department of Education shall ensure that education is provided for all clients of school age who are in any state owned, state operated, or any other designated facility. (Code 1933, § 88-2503.11, enacted by Ga. L. 1978, p. 1826, § 1.)

37-4-107. Appointment of client representatives and guardians ad litem; notification provisions; duration and scope of guardianship ad litem.

(a) At the time a client is admitted to any facility under this chapter, that facility shall make diligent efforts to secure the names and addresses of at least two representatives, which names and addresses shall be entered in the client's clinical record.

(b) The client may designate one representative; the second representative or, in the absence of designation of one representative by the client, both representatives shall be selected by the facility. If the facility is to select both representatives, it must make one selection from among the following persons in the order of listing: the client's legal guardian, spouse, adult child, parent, attorney, adult next of kin, or adult friend. The second representative shall also be selected from the above list but without regard to the order of listing, provided that the second representative shall not be the person who filed the petition seeking an order for the client to receive services from the department.

(c) If the facility is unable to secure at least two representatives after diligent search or if the department is the guardian of the client, that fact shall be entered in the client's clinical record and the facility shall apply to the court in the county of the client's residence for the appointment of a guardian ad litem, which guardian ad litem shall not be the department. On application of any person or on its own motion, the court may also appoint a guardian ad litem for a client for whom two representatives have been named whenever the appointment of a guardian ad litem is deemed necessary for protection of the client's rights. Such guardian ad litem shall act as representative of the client on whom notice is to be served under this chapter and shall have the powers granted to representatives by this chapter.

(d) At any time notice is required by this chapter to be given to the client's representatives, such notice shall be served on the representatives designated under this Code section. The client's guardian ad litem, if any, shall likewise be served. Unless otherwise provided, notice may be served in person or by first-class mail. When notice is served by mail, a record shall be made of the date of mailing and shall be placed in the client's clinical record. Service shall be completed upon mailing.

(e) At any time notice is required by this chapter to be given to the client, the date on which notice is given shall be entered on the client's clinical record. If the client is unable to comprehend a written notice, a reasonable effort shall be made to explain the notice to him.

(f) At the time a court enters an order pursuant to this chapter, such order and notice of the date of entry of the order shall be served on the

client and his representatives as provided in subsection (d) of this Code section.

(g) Notice of a client's admission to a facility shall be given to his representatives in writing.

(h) In every instance in which a court shall appoint a guardian ad litem for any person pursuant to the terms of this chapter, such guardianship shall be for the limited purpose stated in the order of the court and shall expire automatically after 90 days or after a lesser time stated in the order. The responsibility of the guardian ad litem shall not extend beyond the specific purpose of the appointment. (Code 1933, § 88-2503.18, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2012, p. 775, § 37/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (d).

Cross references. — Guardians of incapacitated adults, T. 29, C. 5.

JUDICIAL DECISIONS

Cited in Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980).

37-4-108. Right of clients or representatives to petition for writ of habeas corpus and for judicial protection of rights and privileges granted by chapter.

(a) At any time and without notice, a person detained by a facility or a relative or friend on behalf of such person may petition as provided by law for a writ of habeas corpus to question the cause and legality of detention and to request any court of competent jurisdiction on its own initiative to issue a writ for release, provided that in the case of any such petition for the release of a person detained in a facility pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the petition, along with proper certificate of service, shall also be served upon the presiding judge of the court ordering such detention and the prosecuting attorney for such court, which service may be made by certified mail or statutory overnight delivery, return receipt requested.

(b) A client or his or her representatives may file a petition in the appropriate court alleging that the client is being unjustly denied a right or privilege granted by this chapter or that a procedure authorized by this chapter is being abused. An oral statement by a client or his or her representatives to any staff member or other service provider alleging that the client's rights or privileges under this chapter are being violated shall be immediately transmitted to the superintendent, the regional state hospital administrator, or the administrative head of

the facility responsible for the client's treatment or the other person in charge of the client's habilitation plan, who shall assist the client in preparing his or her petition under this Code section. Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue appropriate orders to correct any abuse under this chapter. (Code 1933, §§ 88-2503.14, 88-2505, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1980, p. 678, § 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1324, § 1-13.)

Cross references. — Habeas corpus generally, T. 9, C. 14. Penalty for malicious confinement of sane person in asylum, § 16-5-43.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

ALR. — Habeas corpus on ground of restoration to sanity of one confined as an incompetent other than in connection with crime, 21 ALR2d 1004.

37-4-109. Establishment of patients and staff complaint procedure; final decisionmakers; right of administrative appeal; complaint procedures as alternative to legal remedies.

The department shall establish procedures whereby complaints of the client or complaints of the staff concerning admission, treatment, or habilitation can be speedily heard. Clients shall receive reasonable notice of such procedures. Final decisions shall be made by the superintendent, the regional state hospital administrator, or an advisory committee, whichever is appropriate, with the right of appeal to the commissioner or his or her designee. The board shall establish rules and regulations for the implementation of such procedures. However, the client shall not be required to utilize these procedures in lieu of other available legal remedies. (Code 1933, § 88-2503.22, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1987, p. 3, § 37; Ga. L. 2002, p. 1324, § 1-14; Ga. L. 2009, p. 453, § 3-15/HB 228.)

Cross references. — Reports and investigations regarding mistreatment of hospital patients, residents of long-term care facilities, and others, §§ 31-7-9, 31-8-50 et seq., 31-8-80 et seq., 31-8-100 et seq.

RESEARCH REFERENCES

ALR. — Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USC §§ 1997 —1997j, 93 ALR Fed. 706.

37-4-110. Appeal rights of clients, their representatives, or attorneys; payment of costs of appeal; right of client to subsequent appeal and to legal counsel on appeal.

The client, the client's representatives, or the client's attorney may appeal any order of the probate court or administrative law judge rendered in a proceeding under this chapter to the superior court of the county in which the proceeding was held, except as otherwise provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile court rendered in a proceeding under this chapter to the Court of Appeals and the Supreme Court. The appeal to the superior court shall be made in the same manner as appeals from the probate court to the superior court, except that the appeal shall be heard before the court sitting without a jury as soon as practicable but not later than 30 days following the date on which the appeal is filed with the clerk of the superior court. The appeal from the order of the juvenile court to the Court of Appeals and the Supreme Court shall be as provided by law but shall be heard as expeditiously as possible. The client must pay all costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The client shall retain all rights of review of any order of the superior court, the Court of Appeals, and the Supreme Court as provided by law. The client shall have a right to counsel or, if unable to afford counsel, shall have counsel appointed for the client by the court. The appeal rights provided to the client, the client's representatives, or the client's attorney in this Code section are in addition to any other appeal rights which the parties may have, and the provision of the right for the client, the client's representatives, or the client's attorney to appeal does not deny the right to the Department of Behavioral Health and Developmental Disabilities to appeal under the general appeal provisions of Code Sections 5-3-2 and 5-3-3. (Code 1933, § 88-2503.19, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1986, p. 982, § 12; Ga. L. 1994, p. 1072, § 3; Ga. L. 1995, p. 10, § 37; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2011, p. 337, § 8/HB 324.)

The 2011 amendment, effective July 1, 2011, substituted "administrative law judge" for "hearing officer" in the first sentence.

Editor's notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

JUDICIAL DECISIONS

Jurisdiction on appeal. — Appellate court has no jurisdiction to declare judicial review provisions to be unconstitutional. Robbins v. Lumpkin, 187 Ga. App. 489, 370 S.E.2d 635, cert. denied, 187 Ga. App. 908, 370 S.E.2d 635 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Effect of 1986 amendment. — Georgia Law 1986, p. 982, which affects procedures in probate courts in certain counties, does not affect mental health cases heard by probate courts under O.C.G.A. §§ 37-3-150, 37-4-110, and 37-7-150. 1986 Op. Att'y Gen. No. U86-18.

Part 2

Rights and Privileges as to Manner of Habilitation and as to Maintenance and Release of Clinical Records

Cross references. — Production of medical records for judicial proceedings generally, § 24-10-70 et seq.

37-4-120. Individual dignity of clients to be respected; use of criminal facilities and procedures.

The client's dignity as an individual shall be respected at all times and upon all occasions, including any occasion wherein the client is taken into custody, detained, or transported. Except where required under conditions of extreme urgency, those procedures, facilities, vehicles, and restraining devices normally utilized for criminals or those accused of crime shall not be used in connection with the developmentally disabled. (Code 1933, § 88-2503.2, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2009, p. 453, § 3-5/HB 228.)

RESEARCH REFERENCES

ALR. — Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 ALR3d 854.

37-4-121. Securing of least restrictive alternative placement; assisting client in securing placement in noninstitutional community facilities and programs.

It is the policy of the state that the least restrictive alternative placement be secured for every client at every stage of his habilitation. It shall be the duty of the facility to assist the client in securing placement in noninstitutional community facilities and programs. (Code 1933, § 88-2503.21, enacted by Ga. L. 1978, p. 1826, § 1.)

37-4-122. Client's care and treatment rights.

(a) Each client in a facility and each person receiving services for a developmental disability shall receive habilitation that is suited to his needs and is the least restrictive appropriate habilitation. Such habil-

itation shall be administered skillfully, safely, and humanely with full respect for his dignity and personal integrity.

(b) In order to assure proper habilitation, it shall be the duty of the superintendent or regional state hospital administrator of a facility to ensure that each client receives such medical attention as is suitable to his condition.

(c) Each client shall have the right to participate in his habilitation. The department shall issue regulations to ensure that each client participates in his habilitation to the maximum extent possible. Unless the disclosure to the client is determined by the superintendent or regional state hospital administrator or person having charge of the client's habilitation to be detrimental to the physical or mental health of the client and unless a notation to that effect is made a part of the client's record, the client shall have the right to reasonable access to review his medical file, to be told his diagnosis, to be consulted on the habilitation recommendation, and to be fully informed concerning his medication, including its side effects and available treatment alternatives.

(d) If a client admitted to a facility under this chapter is able to secure the services of a private physician or psychologist, he shall be allowed to see his physician or psychologist at any reasonable time. The superintendent or regional state hospital administrator is authorized and directed to establish regulations designed to facilitate examination and treatment which a client may request from such private physician or psychologist.

(e) Every client admitted to a facility under this chapter shall be examined by the staff of the admitting facility as soon as possible after his admission. (Code 1933, § 88-2503.4, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1991, p. 1059, § 25; Ga. L. 2002, p. 1324, § 1-19; Ga. L. 2009, p. 453, § 3-7/HB 228.)

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 121 (1992).

RESEARCH REFERENCES

ALR. — Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 ALR3d 854.

37-4-123. Recognition of clients' physical integrity; rights to refuse medication; obtaining consent to treatment and surgery; performance of emergency surgery, immunity of physician; direction of notice of actions taken under Code section.

(a) It shall be the policy of this state to recognize the personal physical integrity of all clients.

(b) It shall be the policy of this state to protect reasonably the right of every individual to refuse medication, except in cases where a physician determines that refusal would be unsafe to the client or others. If the client continues to refuse medication after such initial emergency treatment, a concurring opinion from a second physician must be obtained before medication can be continued without the client's consent. Further, in connection with any hearing under this chapter, the client has the right to appear and testify as free from any side effects or adverse effects of the medication as is reasonably possible.

(c) Any client objecting to the treatment being administered to him shall have a right to request a protective order pursuant to Code Section 37-4-108.

(d) Except as provided in subsections (b) and (e) of this Code section, consent to medical treatment and surgery shall be obtained and regulated by Chapter 9 of Title 31.

(e) In cases of grave emergency where the medical staff of the facility in which a developmentally disabled person has been accepted for habilitation determines that immediate surgical or other intervention is necessary to prevent serious physical consequences or death and where delay in obtaining consent would create a grave danger to the physical health of such person, as determined by at least two physicians, then essential surgery or other intervention may be administered without the consent of the person, the spouse, next of kin, attorney, guardian, or any other person. In such cases, a record of the determination of the physicians shall be entered into the medical records of the client and this will be proper consent for such surgery or other intervention. Such consent will be valid, notwithstanding the type of admission of the client, and it shall also be valid whether or not the client has been adjudged incompetent. This Code section is intended to have application to those individuals who, as a result of their advanced age, impaired thinking, or other disability, cannot reasonably understand the consequences of withholding consent to surgery or other intervention as contemplated by this Code section. Any physician, agent, employee, or official who obtains consent or relies on such consent as authorized by this Code section and who acts in good faith

and within the provisions of this chapter shall be immune from civil or criminal liability for his actions in connection with said obtaining or relying upon such consent. Actual notice of any action taken pursuant to this Code section shall be given to the client and the spouse, next of kin, attorney, guardian, or representative of the client as soon as practically possible. (Code 1933, § 88-2516, enacted by Ga. L. 1977, p. 886, § 1; Code 1933, § 88-2503.6, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 2009, p. 453, § 3-5/HB 228.)

JUDICIAL DECISIONS

Involuntary administration of drugs by state does not violate due process. — State's policy and procedure for the involuntary administration of antipsychotic drugs to patients at the state mental hospital does not violate substantive or procedural due process. Hightower by Dehler v. Olmstead, 959 F. Supp. 1549 (N.D. Ga. 1996).

RESEARCH REFERENCES

ALR. — Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty, 74 ALR4th 1099.

37-4-124. Mistreatment, neglect, or abuse of clients prohibited; use of medication, physical restraints, or seclusion restricted; standards for use of physical restraints.

(a) Mistreatment, neglect, or abuse in any form of any client is prohibited. Medication in quantities that interfere with the client's habilitation program is prohibited. All medication, seclusion, or physical restraints are to be used solely for the purposes of providing effective habilitation and protecting the safety of the client and other persons. Restraints shall not be employed as punishment, for the convenience of the staff, or as a substitute for programs.

(b) Physical restraints shall not be applied unless:

(1) A person who is involved in the care and treatment of the client as a physician, psychologist, or clinical nurse specialist in psychiatric/mental health determines such restraints to be necessary in order to prevent a client from seriously injuring himself or herself or others; or

(2) A professional staff member determines that there exists an emergency requiring the use of such restraints. For purposes of this Code section, an emergency exists when the client presents an immediate danger of injury to himself or herself or others. The authorization of physical restraints by a professional staff member shall be immediately reported to a physician and any psychologist

involved in the care and treatment of the client. A physician's, psychologist's, or clinical nurse specialist's in psychiatric/mental health order for restraints shall expire after 12 hours, at which time a new determination of the need for restraints must be made. The physician, psychologist involved in the care and treatment of the client, or clinical nurse specialist in psychiatric/mental health involved in the care and treatment of the client must issue a written order for each use of restraints. The facility shall have written policies and procedures which govern the use of such restraints and which clearly delineate, in descending order, the personnel who can authorize the use of restraints in emergency situations.

(c) Every use of physical restraints shall be made a part of the resident's clinical record. The following shall be documented in the record:

(1) The reasons for applying the restraint;

(2) The signature of the person authorizing the restraint;

(3) The time of application and removal of the restraint; and

(4) A record of checks at least every 30 minutes by a staff member trained in use of restraints and the signature of the person making such checks. A copy of each use of restraint shall be forwarded to the superintendent or regional state hospital administrator for review.

(d) For the purposes of this Code section, those devices which restrain movement but are applied for protection from accidental injury or are required for the medical treatment of the client's physical condition or for supportive or corrective needs of the client shall not be considered physical restraints. However, devices used in such situations must be authorized and applied in compliance with the facility's policies and procedures. The use of any such devices shall be recorded in writing as a part of the client's individualized program plan. (Code 1933, § 88-2503.5, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 734, § 2; Ga. L. 1982, p. 3, § 37; Ga. L. 1997, p. 911, § 5; Ga. L. 2002, p. 1324, § 1-19.)

Cross references. — Abuse and mistreatment of hospital patients, residents of long-term care facilities, and other institutions, §§ 31-7-9, 31-8-50 et seq., 31-8-80 et seq., 31-8-100 et seq.

RESEARCH REFERENCES

ALR. — Hospital's liability for injuries sustained by patient as a result of restraints imposed on movement, 25 ALR3d 1450.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 ALR3d 854.

37-4-125. (Effective until January 1, 2013. See note.) Treatment of clinical records; scope of privileged communications; liability for disclosure.

(a) A clinical record for each client shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises at reasonable times determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:

(1) When the superintendent or regional state hospital administrator of the facility where the record is kept deems it essential for continued habilitation, a copy of the record or parts thereof may be released to persons in charge of a client's habilitation when and as necessary for the habilitation of the client;

(2) A copy of the record may be released to any person or entity designated in writing by the client or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor client has been given by order of a court;

(2.1) A copy of the record of a deceased client or deceased former client may be released to or in response to a valid subpoena of a coroner or medical examiner under Chapter 16 of Title 45, except for matters privileged under the laws of this state;

(3) When the habilitation plan of the client involves transfer of that client to another facility or involves the receipt of community services by the client, a copy of the record may be released to that facility or to that entity rendering such community services;

(4) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper habilitation of the client;

(5) A copy of the record shall be released to the client's attorney if the attorney so requests and the client, or the client's legal guardian, consents to the release;

(6) In a bona fide medical emergency, as determined by a physician treating the client, the superintendent or regional state hospital administrator may release a copy of the record to the treating physician;

(7) At the request of the client, the client's legal guardian, or the client's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;

(8) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this state;

(8.1) A copy of the record may be released to the legal representative of a deceased client's estate, except for matters privileged under the laws of this state;

(9) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed as to whether a person is or has been a client in a state facility, as well as the client's current address, if known;

(10) A copy of the client's clinical record may be released under the conditions and for the uses and purposes set forth in Code Section 31-7-6; and

(11) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a client in the facility, and the name, address, and last known whereabouts of any alleged client perpetrator.

(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the client shall be authorized to give evidence as to any matter concerning the client, including evidence as to communications otherwise privileged under Code Section 24-9-21, 24-9-40, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged client information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by subsection (a) of this Code section shall not be liable to the client or any other person, notwithstanding any contrary provision of Code Section 24-9-21, 24-9-40, or 43-39-16. (Code 1933, § 88-2503.12, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 734, § 3; Ga. L. 1991, p. 1059, § 26; Ga. L. 1994, p. 1072, § 4; Ga. L. 2002, p. 1324, § 1-19.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, a semicolon was substituted for a period at the end of paragraph (a)(8.1).

Cross references. — Release of medical information generally, § 24-9-40 et seq.

Editor's notes. — Code Section 37-4-125 is set out twice in this Code. The first version is effective until January 1,

2013, and the second version becomes effective on that date.

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 121 (1992).

37-4-125. (Effective January 1, 2013. See note.) Treatment of clinical records; scope of privileged communications; liability for disclosure.

(a) A clinical record for each client shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises at reasonable times determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:

(1) When the superintendent or regional state hospital administrator of the facility where the record is kept deems it essential for continued habilitation, a copy of the record or parts thereof may be released to persons in charge of a client's habilitation when and as necessary for the habilitation of the client;

(2) A copy of the record may be released to any person or entity designated in writing by the client or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor client has been given by order of a court;

(2.1) A copy of the record of a deceased client or deceased former client may be released to or in response to a valid subpoena of a coroner or medical examiner under Chapter 16 of Title 45, except for matters privileged under the laws of this state;

(3) When the habilitation plan of the client involves transfer of that client to another facility or involves the receipt of community services by the client, a copy of the record may be released to that facility or to that entity rendering such community services;

(4) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper habilitation of the client;

(5) A copy of the record shall be released to the client's attorney if the attorney so requests and the client, or the client's legal guardian, consents to the release;

(6) In a bona fide medical emergency, as determined by a physician treating the client, the superintendent or regional state hospital administrator may release a copy of the record to the treating physician;

(7) At the request of the client, the client's legal guardian, or the client's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;

(8) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this state;

(8.1) A copy of the record may be released to the legal representative of a deceased client's estate, except for matters privileged under the laws of this state;

(9) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed as to whether a person is or has been a client in a state facility, as well as the client's current address, if known;

(10) A copy of the client's clinical record may be released under the conditions and for the uses and purposes set forth in Code Section 31-7-6; and

(11) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a client in the facility, and the name, address, and last known whereabouts of any alleged client perpetrator.

(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the client shall be authorized to give evidence as to any matter concerning the client, including evidence as to communications otherwise privileged under Code Section 24-5-501, 24-12-1, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged client information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by subsection (a) of this Code section shall not be liable to the client or any other person, notwithstanding any contrary provision of Code Section 24-5-501, 24-12-1, or 43-39-16. (Code 1933, § 88-2503.12, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1979, p. 734, § 3; Ga. L. 1991, p. 1059, § 26; Ga. L. 1994, p. 1072, § 4; Ga. L. 2002, p. 1324, § 1-19; Ga. L. 2011, p. 99, § 54/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-5-501, 24-12-1," for "Code Section 24-9-21, 24-9-40," near the end of subsections (b) and (c). See editor's note for applicability.

Editor's notes. — Code Section 37-4-125 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

37-4-126. Right of client to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.

(a) Except as provided in subsection (c) of Code Section 37-4-122, every client shall have the right to examine all medical records kept in the client's name by the department or the facility where the client was receiving services.

(b) Every client shall have the right to request that the department or facility correct any inaccurate information found in his medical record.

(c) The board shall promulgate reasonable rules and regulations to implement subsections (a) and (b) of this Code section. Nothing contained in this Code section shall be construed to require the deletion of information by the department nor constrain the department from destroying client records after a reasonable passage of time.

(d) Notwithstanding paragraphs (7) and (8) of Code Section 15-9-37, all files and records of a court in a proceeding under this chapter shall remain sealed and shall be open to inspection only upon order of the court, issued after notice to the client and subject to the provisions of Code Section 37-4-125 pertaining to the medical portions of the record, provided that the court may refer to such files and records in any subsequent proceeding under this chapter concerning the same client, on condition that the files and records of such subsequent proceeding will then be sealed in accordance with this subsection. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records but without personal identifying information and under whatever conditions upon their use and distribution that the court may deem proper, and the court may punish by contempt any violations of those conditions. Otherwise, inspection of the sealed files and records may be permitted only by an order of the court upon petition by the person who is the subject of the records and only by those persons

named in the order. (Code 1933, § 88-2503.13, enacted by Ga. L. 1978, p. 1826, § 1.)

Cross references. — Release of medical information generally, § 24-9-40 et seq.

37-4-127. Right of client's attorney to interview persons in charge of client's habilitation in a facility; establishment of regulations as to release of information to client's attorney.

The client's attorney shall have the right, at reasonable times, to interview the persons in charge of the client's habilitation in any facility and to have the client's records interpreted by them. The superintendent or regional state hospital administrator is authorized and directed to establish reasonable regulations to make available to the client's attorney all such information in the possession of the facility as the attorney requires in order to advise and represent the client concerning his habilitation. (Code 1933, § 88-2503.20, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 2002, p. 1324, § 1-19.)

Cross references. — Release of medical information generally, § 24-9-40 et seq.

CHAPTER 5

COMMUNITY SERVICES FOR THE DEVELOPMENTALLY DISABLED

Sec.		Sec.	
37-5-1.	Short title.	37-5-7.	Duty of department to provide consulting and financial assistance to county boards of health; failure of county boards of health to provide community services.
37-5-2.	Declaration of policy.		
37-5-3.	Community services defined.		
37-5-4.	Applicability of chapter; eligibility for community services.	37-5-8.	Duty of department to establish standards for community services, inspect programs, issue statements of approval; procedure upon discovery of deficiencies; reinspection.
37-5-5.	Duty of county board of health to provide community services; district health department to advise families or guardians of developmentally disabled individuals.	37-5-9.	Fees for community services.
		37-5-10.	Timetable for implementation of this chapter.
37-5-6.	County or health district plan for community services; review and approval of plan by the department.		

Cross references. — Child, family, or group-care facility operators prohibited from employing or allowing to reside or be domiciled persons with certain past criminal violations, § 16-12-1.1 Day-care centers for the developmentally disabled, § 37-6-1 et seq.

Administrative rules and regulations. — Rules and regulations on "Mental Health and Mental Retardation and Substance Abuse," Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Chapters 290-4-1 and 290-4-3 et seq.

RESEARCH REFERENCES

ALR. — Validity, construction, and effect of statute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill, 51 ALR4th 1096.

37-5-1. Short title.

This chapter shall be known and may be cited as the "Community Services Act for the Developmentally Disabled." (Ga. L. 1972, p. 700, § 1; Ga. L. 2009, p. 453, § 3-5/HB 228.)

37-5-2. Declaration of policy.

Since the State of Georgia accepts a responsibility for its developmentally disabled citizens and an obligation to them which it must discharge, facilities, programs, and services shall be made available to meet the needs of each developmentally disabled person during his

entire lifetime. The primary purpose of this chapter shall be to provide community based alternatives to total institutional care so that developmentally disabled individuals can continue to live in their home communities. (Ga. L. 1972, p. 700, § 2; Ga. L. 2009, p. 453, § 3-5/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in the last sentence.

JUDICIAL DECISIONS

Building and operation of home subject to zoning regulations. — Nonprofit corporation attempting to build and operate a community home for mentally retarded adults consistent with O.C.G.A. § 37-5-2 is not immune from local zoning regulations. Macon Ass'n for Retarded Citizens v. Macon-Bibb County Planning & Zoning Comm'n, 252 Ga. 484, 314 S.E.2d 218, appeal dismissed, 469 U.S. 802, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

OPINIONS OF THE ATTORNEY GENERAL

When aid to parent for child care cannot be ordered. — If the state or county is unable to help a parent obtain help for a child and if the parent cannot afford what private care is available, the juvenile courts of this state cannot order the state or county to help the parent bear the cost of caring for the child. 1967 Op. Att'y Gen. No. 67-88.

37-5-3. Community services defined.

As used in this chapter, the term "community services" means a coordinated, consumer and family centered, consumer and family directed, and comprehensive system of community services, individualized supports, and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life. Such services shall include those deemed reasonably necessary by the department to provide for education, training, rehabilitation, and care of individuals with developmental disabilities and shall include but not be limited to: diagnostic and evaluation services; day-care and training services; work-activity services; support coordination, day support, and personal support services; supportive employment services; community residential services such as group family-care homes, community living arrangements, and host homes; transportation services incidental to educational, training, and rehabilitation services; technology and durable equipment support and services; social services; medical services; and specified home services. (Code 1933, § 88-2502, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1972, p. 700, § 3; Ga. L. 1978, p. 1826, § 1; Ga. L. 2009, p. 453, § 3-16/HB 228.)

JUDICIAL DECISIONS

Cited in Clark v. State, 245 Ga. 629, 266 S.E.2d 466 (1980); Benham v. Edwards, 501 F. Supp. 1050 (N.D. Ga. 1980).

RESEARCH REFERENCES

C.J.S. — 56 C.J.S., Mental Health, §§ 1, 3.

37-5-4. Applicability of chapter; eligibility for community services.

(a) This chapter shall apply to all county boards of health in Georgia and to the Department of Behavioral Health and Developmental Disabilities.

(b) Developmentally disabled individuals who are not eligible to receive community services from other public agencies and developmentally disabled individuals who are not in fact receiving such services shall be entitled to receive all services afforded under this chapter. (Ga. L. 1972, p. 700, § 4; Ga. L. 2009, p. 453, §§ 3-2, 3-5/HB 228.)

37-5-5. Duty of county board of health to provide community services; district health department to advise families or guardians of developmentally disabled individuals.

(a) County boards of health shall, subject to limitations herein specified, provide community services and shall employ such personnel as may be needed to serve developmentally disabled individuals in their respective counties.

(b) The district health department shall be the source of referral and information for the families or guardians of developmentally disabled individuals providing lifetime advice and guidance and referral to appropriate services. (Ga. L. 1972, p. 700, § 5; Ga. L. 2009, p. 453, § 3-5/HB 228.)

JUDICIAL DECISIONS

Cited in Macon Ass'n for Retarded Citizens v. Macon-Bibb County Planning & Zoning Comm'n, 252 Ga. 484, 314 S.E.2d 218, appeal dismissed, 469 U.S. 802, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 45, 46, 52.

C.J.S. — 57 C.J.S., Mental Health, § 228 et seq.

37-5-6. County or health district plan for community services; review and approval of plan by the department.

(a) Each county board of health shall, on or before July 1, 1973, submit to the department a plan for providing comprehensive community services to developmentally disabled individuals residing in the county, provided that any group of counties comprising a health district may join and submit one plan covering the entire health district. The plan shall state:

(1) An estimate of the number of developmentally disabled individuals residing in the county who require services afforded by this chapter;

(2) A description of the specific services required by developmentally disabled individuals residing in the county;

(3) A description of physical facilities available for use in providing the required community services;

(4) A description of physical facilities, if any, which must be constructed to provide the necessary services;

(5) A proposed staff roster of professional and nonprofessional employees who must be hired to provide necessary services; and

(6) A detailed budget showing all costs of providing the necessary services for fiscal years 1977, 1978, and 1979 and a summary budget for each fiscal year from 1980 through 1985 inclusive.

(b) The department shall provide assistance to county boards of health in preparing the plan required by subsection (a) of this Code section.

(c) The department shall review the plan submitted by each county or district as required by subsection (a) of this Code section and shall suggest such changes as may be necessary to achieve the objectives of this chapter.

(d) On or before July 1, 1975, the department shall publish in print or electronically an approved plan for each county or health district which shall address each point set out in subsection (a) of this Code section. (Ga. L. 1972, p. 700, § 6; Ga. L. 2009, p. 453, § 3-5/HB 228; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in subsection (d).

37-5-7. Duty of department to provide consulting and financial assistance to county boards of health; failure of county boards of health to provide community services.

(a) The Department of Behavioral Health and Developmental Disabilities shall provide assistance to county boards of health in developing a full range of community services for the developmentally disabled through consultation and provision of standards. The department shall assist county boards of health in obtaining federal funds where such resources are available and shall finance 100 percent of all operating costs not borne by federal funds.

(b) Should a county board of health fail to take the necessary action to provide approved community services for developmentally disabled individuals, the department shall be empowered to establish and operate such services in lieu of operation by such county board of health. (Ga. L. 1972, p. 700, § 7; Ga. L. 2009, p. 453, §§ 3-2, 3-5/HB 228.)

OPINIONS OF THE ATTORNEY GENERAL

Involvement of Department. — Department of Human Resources may become involved if a county board of health fails to provide necessary services to mentally retarded individuals. 1973 Op. Att'y Gen. No. 73-164.

37-5-8. Duty of department to establish standards for community services, inspect programs, issue statements of approval; procedure upon discovery of deficiencies; reinspection.

The department shall establish standards for community services, shall regularly inspect programs under operation, and shall issue statements of approval to programs which meet state standards. Where deficiencies are found, county boards of health shall be notified and a reasonable time to correct such deficiencies shall be allowed. Reinspections shall be made as necessary to assure state approval of services. (Ga. L. 1972, p. 700, § 8.)

37-5-9. Fees for community services.

The department and its contractors are authorized to charge fees for community services they provide under this chapter based upon ability to pay, in accordance with guidelines established by the department. When such services are provided by county boards of health, Code Section 31-3-4 authorizes the establishment of fees for the services. No person shall be denied services on the basis of inability to pay. (Ga. L. 1972, p. 700, § 9; Ga. L. 1989, p. 459, § 1.)

37-5-10. Timetable for implementation of this chapter.

The department shall employ sufficient professional and nonprofessional persons to assure full implementation of this chapter by June 30, 1978. All community services specified in Code Section 37-5-3 shall be made available for all mentally retarded individuals by June 30, 1978. (Ga. L. 1972, p. 700, § 10; Ga. L. 2009, p. 453, § 3-17/HB 228.)

CHAPTER 6

DAY-CARE CENTERS FOR THE DEVELOPMENTALLY DISABLED

Sec.
37-6-1. Day-care center defined.
37-6-2. Participation by department in financing of day-care centers for developmentally disabled children.
37-6-3. Participation by department in financing of day-care centers generally.
37-6-4. Grants-in-aid to county boards of health for purchase of services from private day-care centers.
37-6-5. Statements of operating costs.
37-6-6. Inspection and approval of day-care centers.
37-6-7. Departmental standards for day-care centers.
37-6-8. Expenditure of funds appropriated for this chapter.

Cross references. — Child, family, or group-care facility operators prohibited from employing or allowing to reside or be domiciled persons with certain past criminal violations, § 16-12-1.1.

RESEARCH REFERENCES

ALR. — Validity, construction, and effect of statute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill, 51 ALR4th 1096.

37-6-1. Day-care center defined.

As used in this chapter, the term "day-care center" means any facility that is operated and maintained for and is qualified to furnish care and training to individuals with developmental disabilities on less than a 24 hour basis. (Ga. L. 1963, p. 259, § 1; Ga. L. 1966, p. 374, § 1; Ga. L. 2009, p. 453, § 3-18/HB 228.)

37-6-2. Participation by department in financing of day-care centers for developmentally disabled children.

The department is authorized, directed, and empowered to participate in the financing of public, nonprofit day-care centers for developmentally disabled children upon approval of such day-care centers under Code Section 37-6-6. (Ga. L. 1966, p. 374, § 2; Ga. L. 2009, p. 453, § 3-5/HB 228.)

37-6-3. Participation by department in financing of day-care centers generally.

The department is authorized, directed, and empowered to participate in the financing of day-care centers for developmentally disabled individuals that may be approved by the department in such municipalities and counties of this state. In carrying out the authority and power set forth in this Code section the department is authorized, directed, and empowered to expend funds in assisting such day-care centers for developmentally disabled individuals in the operation of such centers. (Ga. L. 1963, p. 259, § 3; Ga. L. 1966, p. 374, § 6; Ga. L. 2009, p. 453, § 3-5/HB 228.)

37-6-4. Grants-in-aid to county boards of health for purchase of services from private day-care centers.

The department is authorized and empowered to make grants-in-aid to county boards of health to purchase care and training for developmentally disabled individuals from privately operated, nonprofit day-care centers provided these developmentally disabled individuals have been certified as eligible for financial assistance. (Ga. L. 1966, p. 374, § 3; Ga. L. 1993, p. 1445, § 17.6; Ga. L. 2009, p. 453, § 3-5/HB 228.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

37-6-5. Statements of operating costs.

The department may require any day-care center that receives state funds under Code Sections 37-6-2 and 37-6-4 to submit to the department at appropriate times certified statements of operating costs. (Ga. L. 1966, p. 374, §§ 4, 8.)

37-6-6. Inspection and approval of day-care centers.

The department is authorized, directed, and empowered (1) to inspect day-care centers for the developmentally disabled in order to determine compliance with departmental standards for such centers and (2) to approve those day-care centers which meet minimum departmental standards for matching funds under Code Section 37-6-2 or grants-in-aid under Code Section 37-6-4. Inspection shall include both those centers now in operation and those which will begin operation in the future. Reinspections may be made at any time and approval may be withdrawn whenever circumstances indicate that a day-care center no longer meets departmental standards. If approval is withdrawn, it cannot be reinstated until the deficiencies have been corrected and a satisfactory reinspection has been made. After a day-care center has been approved by the department and a certificate of approval has been issued, the center is not subject to examination, approval, or licensing by any other department, agency, or division of the state. (Ga. L. 1966, p. 374, §§ 5, 9; Ga. L. 2009, p. 453, § 3-5/HB 228.)

37-6-7. Departmental standards for day-care centers.

(a) The department is authorized, directed, and empowered:

(1) To classify day-care centers; and

(2) To prescribe and set out the kind and quality of buildings, equipment, facilities, and services which day-care centers shall maintain in order to give proper care and training to developmentally disabled individuals.

(b) The board shall have the power to adopt and promulgate reasonable rules and regulations for the establishment of standards which in its judgment are necessary to protect the health and lives of developmentally disabled individuals. (Ga. L. 1963, p. 259, § 8; Ga. L. 1966, p. 374, § 10; Ga. L. 2009, p. 453, § 3-5/HB 228.)

37-6-8. Expenditure of funds appropriated for this chapter.

The department is authorized, directed, and empowered to expend funds appropriated to the department for the purposes of administering this chapter. (Ga. L. 1963, p. 259, § 7; Ga. L. 1966, p. 374, § 11.)

CHAPTER 7

HOSPITALIZATION AND TREATMENT OF ALCOHOLICS, DRUG DEPENDENT INDIVIDUALS, AND DRUG ABUSERS

Article 1

General Provisions

Sec.
37-7-1. Definitions.
37-7-2. Authority of board to issue regulations; powers of department generally.
37-7-3. Coordination of state drug and alcohol abuse programs.
37-7-4. Validity of hospitalization orders entered before September 1, 1978; establishment of regulations authorizing continued hospitalization of patients hospitalized before September 1, 1978.
37-7-5. Immunity from liability for actions taken in good faith compliance with admission and discharge provisions of chapter.
37-7-6. Apprehension by peace officer of patient who leaves facility without permission.
37-7-7. Approval of private facilities as emergency receiving facilities, evaluating facilities, or treatment facilities; powers and duties of private facilities; right to deny admission.
37-7-8. "Drug" defined; Right of minor to obtain treatment of drug abuse on his consent alone; binding effect of consent; informing minor's parent, spouse, custodian, or guardian of treatment.

Article 2

Hospitalization and Treatment of Voluntary Patients

37-7-20. Admission of voluntary patients; parental consent to treatment; giving notice of rights to patient at time of admission.
37-7-21. Discharge of voluntary patients upon recovery or termination of need for hospitalization; notice of discharge.
37-7-22. Right of voluntary patient to discharge upon application; procedure on denial of application for discharge; notice of discharge.
37-7-23. Giving voluntary patients periodic notice of rights.
37-7-24. Transfer of involuntary patients to voluntary status; notice of transfer and of discharge of patients so transferred; discharge of transferred patient charged with criminal offense.

Article 3

Examination, Hospitalization, and Treatment of Involuntary Patients

Part 1

Emergency Receiving Facilities for Examination of Persons Apprehended Pursuant to Physician's Certificate or Court Order

37-7-40. Designation by department of emergency receiving facilities.
37-7-41. Emergency involuntary treatment; who may certify need; delivery for examination; report of delivery required.
37-7-42. Emergency admission of persons arrested for penal offenses; report by officer; entry of report into clinical record.
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37-7-162. Patient's care and treatment rights.
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Sec.
37-7-164. "Representative," "substantial change" defined; consultation by patient's representative with treatment facility; notification of treatment change; guardian's consultation and notification rights.
37-7-165. Mistreatment, neglect, or abuse of patients; use of medication, seclusion, or physical restraints.
37-7-166. (Effective until January 1, 2013. See note.) Maintenance, confidentiality, and release of clinical records; disclosure of confidential or privileged patient information.
37-7-166. (Effective January 1, 2013. See note.) Maintenance, confidentiality, and release of clinical records; disclosure of confidential or privileged patient information.
37-7-167. Right of patient to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.
37-7-168. Right of patient's attorney to interview physician or psychologist and staff attending patient; establishment of regulations as to release of information to patient's attorney.

Cross references. — Duties of Department of Human Resources relating to classification and evaluation of drug abuse treatment and education programs, T. 26, C. 5. Protective services for abused, neglected, or exploited disabled adults, T. 30, C. 5. Reporting of abuse or exploitation of residents of long-term care facilities, § 31-8-80 et seq. Rights of persons residing in long-term care facilities generally, § 31-8-100 et seq.

Administrative rules and regulations. — Rules regulating "Drug Abuse Treatment and Education Programs," Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Chapter 290-4-2.

Adult crisis stabilization units, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Behavioral Health and Developmental Disabilities, Chapter 82-3-1.

Children and adolescent crisis stabilization units, Official Compilation of the Rules and Regulations of the State or Georgia, Department of Behavioral Health and Disabilities, Chapter 82-4-1.

Law reviews. — For article, "The Olmstead Decision: The Road to Dignity and Freedom," see 26 Ga. St. U.L. Rev. 651 (2010). For article, "Olmstead's Promise and Cohousing's Potential," see 26 Ga. St. U.L. Rev. 663 (2010). For article, "From the Inside Out: Personal Perspectives of Six Georgians on Their Institutional Experiences," see 26 Ga. St. U.L. Rev. 741 (2010). For article, "The Constitutional Right to Community Services," see 26 Ga. St. U.L. Rev. 763 (2010). For article, "Reconsidering Makin v. Hawaii: The Right of Medicaid Beneficiaries to Home-Based Services as an Alternative to Institutionalization," see 26 Ga. St. U.L. Rev. 803 (2010). For article, "The Potential and Risks of Relying on Title II's Integration Mandate to Close Segregated Institutions," see 26 Ga. St. U.L. Rev. 855 (2010). For article, "Beyond Residential Segregation: The Application of Olmstead to Segregated Employment Settings," see 26 Ga. St. U.L. Rev. 875 (2010). For article, "From Almshouses to Nursing Homes and Community Care: Lessons from Medicaid's History," see 26 Ga. St. U.L. Rev. 937 (2010).

For note on 1991 amendments to this chapter, see 8 Ga. St. U.L. Rev. 121 (1992). For note, "Deinstitutionalization: Georgia's Progress in Developing and Implementing an 'Effectively Working Plan' as Required by Olmstead v. L.C. ex rel," see 25 Ga. St. U.L. Rev. 699 (2009).

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Purpose of procedural safeguards contained in chapter. — Procedural safeguards contained in O.C.G.A. Ch. 7, T. 37 are obviously for purpose of ensuring that individual rights are not eroded in name of medical expediency. Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

Procedural safeguards of chapter must be strictly complied with. — O.C.G.A. Ch. 7, T. 37 involves extremely sensitive area of deprivation of liberty and requires strict compliance with all of its procedures. Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

Reason for requiring rigid adherence to designated procedures. — Rigid adherence to designated procedures is especially important in light of relative ease with which one may be taken from first interview with a physician to involuntary confinement and treatment. Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

Provisions for contesting confinement. — O.C.G.A. Ch. 7, T. 37 amply provides for the invocation of legal measures to contest the validity of confinement. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Rationale for limited liability of private physicians. — Throughout the various provisions of O.C.G.A. Ch. 7, T. 37, the judgment of the private physician is sought, but is not required. Rather, it is the judgment of the state's physicians that is determinative of the question of further examination or treatment. To open physicians to federal suit by decreeing that the physicians act for the state in making purely medical decisions would effectively chill the use, and accompanying benefit, of a private physician's judgment in an emergency situation simply because the physician may not be willing to give it for fear of being exposed to a lawsuit. The disadvantage in this is that the statutory alternatives do not provide the immediacy of action of a physician's certificate. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Treatment time limits. — O.C.G.A. Ch. 7, T. 37 prescribes maximum time limits for steps leading to treatment, but no minimums. If two physicians agree that an individual needs involuntary treatment as contemplated by that chapter, the elapsed time between the patient's arrival at the first doctor's office or at the hospital and onset of involuntary psychiatric treatment could be no more than the time occupied by two interviews, which is the outer limits of due process and cannot be reduced by procedural safeguards any further. Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

ARTICLE 1

GENERAL PROVISIONS

37-7-1. Definitions.

As used in this chapter, the term:

(1) "Alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages or who uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted.

(2) "Alcoholic beverages" means alcoholic spirits, liquors, wines, beers, and every liquid or fluid, patented or not, containing alcoholic spirits, wine, or beer or any other liquid or fluid containing alcohol in any form and producing intoxication in any form or to any degree.

(3) "Alcoholic, drug dependent individual, or drug abuser requiring involuntary treatment" means a person who is an inpatient or an outpatient.

(3.1) "Available outpatient treatment" means outpatient treatment, either public or private, available in the patient's community, including but not limited to supervision and support of the patient by family, friends, or other responsible persons in that community. Outpatient treatment at state expense shall be available only within the limits of state funds specifically appropriated therefor.

(4) "Chief medical officer" means the physician with overall responsibility for patient treatment at any facility receiving patients under this chapter or a physician appointed in writing as the designee of such chief medical officer.

(5) "Clinical record" means a written record pertaining to an individual patient and shall include all medical records, progress notes, charts, admission and discharge data, and all other information which is recorded by a facility which pertains to the patient's hospitalization and treatment. Such other information as may be required by rules and regulations of the board shall also be included.

(6) "Community mental health center" means an organized program for the care and treatment of alcoholics, drug dependent individuals, or drug abusers operated by a community service board or other appropriate public provider.

(7) "Court" means:

(A) In the case of an individual who is 17 years of age or older, the probate court for the county of residence of the patient or the county in which such patient is found. Notwithstanding Code Section 15-9-13, in any case in which the judge of the probate court is unable to hear a case brought under this chapter within the time required for such hearing or is unavailable to issue the order specified in subsection (b) of Code Section 37-7-41, the judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and be otherwise qualified for his duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such a standing appointment shall serve at the pleasure of the judge making the appointment or his successor in office to hear such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed and as approved by the governing authority of the county for which such person is appointed and shall be paid

from the county funds of the county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served; or

(B) In the case of an individual who is under the age of 17 years, the juvenile court of the county of residence of the patient or the county in which the patient is found.

(8) "Drug dependent individual" or "drug abuser" means a person who habitually lacks self-control as to the use of opium, heroin, morphine, or any derivative or synthetic drug of that group, barbiturates, other sedatives, tranquilizers, amphetamines, lysergic acid diethylamide or other hallucinogens, or any drug, dangerous drug, narcotic drug, marijuana, or controlled substance, as defined in Article 2 or Article 3 of Chapter 13 of Title 16 or Chapter 3 of Title 26; or a person who uses such drugs to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted; provided, however, that no person shall be deemed a drug dependent individual or abuser solely by virtue of his taking, according to directions, any such drugs pursuant to a lawful prescription issued by a physician in the course of professional treatment for legitimate medical purposes.

(9) "Emergency receiving facility" means a facility designated by the department to receive patients under emergency conditions as provided in Part 1 of Article 3 of this chapter.

(10) "Evaluating facility" means a facility designated by the department to receive patients for evaluation as provided in Part 2 of Article 3 of this chapter.

(11) "Facility" means any state owned or state operated hospital, community mental health center, or other facility utilized for the diagnosis, care, treatment, or hospitalization of persons who are alcoholics, drug dependent individuals, or drug abusers and any other hospital or facility within the State of Georgia approved for such purpose by the department.

(12) "Full and fair hearing" or "hearing" means a proceeding before a hearing examiner under Code Section 37-7-83 or Code Section 37-7-93 or before a court as defined in paragraph (7) of this Code section. The hearing may be held in a regular courtroom or in an informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The patient shall be provided with effective assistance of counsel. If the patient cannot afford counsel, the court shall appoint counsel for him or the hearing examiner shall have the court appoint such counsel; provided, however, that the patient shall have the right to refuse in writing the appointment of counsel, in the

discretion of the hearing examiner or the court. The patient shall have the right to confront and cross-examine witnesses and to offer evidence. The patient shall have the right to subpoena witnesses and to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The patient shall have the right to obtain a continuance for any reasonable time for good cause shown. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases. The burden of proof shall be upon the party seeking treatment of the patient. The standard of proof shall be by clear and convincing evidence. At the request of the patient, the public may be excluded from the hearing. The patient may waive his right to be present at the hearing, in the discretion of the hearing examiner or the court. The reason for the action of the court or hearing examiner in excluding the public or permitting the hearing to proceed in the patient's absence shall be reflected in the record.

(13) "Incapacitated by alcohol or drugs" means that a person, as a result of the use of alcoholic beverages, any drug, or any other substances listed in paragraph (8) of this Code section, exhibits life-threatening levels of intoxication, withdrawal, or imminent danger thereof, or acute medical problems; or is under the influence of alcoholic beverages or drugs or any other substances listed in paragraph (8) of this Code section to the extent that the person is incapable of caring for himself or protecting himself due to the continued consumption or use thereof.

(14) "Individualized treatment plan" means a proposal developed during a patient's stay in a facility and which is specifically tailored to the individual patient's treatment needs. Each plan shall clearly include the following:

(A) A statement of treatment goals or objectives based upon and related to a proper evaluation, which can be reasonably achieved within a designated time interval;

(B) Treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to these goals and which include a specific prognosis for achieving these goals;

(C) Identification of the types of professional personnel who will carry out the treatment and procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law;

(D) Documentation of patient involvement and, if applicable, the patient's accordance with the treatment plan; and

(E) A statement attesting that the chief medical officer has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the patient's home community.

(14.1) "Inpatient" means a person who is an alcoholic, a drug dependent individual, or a drug abuser and:

(A)(i) Who presents a substantial risk of imminent harm to that person or others, as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to that person or other persons; or

(ii) Who is incapacitated by alcoholic beverages, drugs, or any other substances listed in paragraph (8) of this Code section on a recurring basis; and

(B) Who is in need of involuntary inpatient treatment.

(14.2) "Inpatient treatment" or "hospitalization" means a program of treatment for alcoholics, drug dependent individuals, or drug abusers within a hospital facility setting.

(14.3) "Involuntary treatment" means inpatient or outpatient treatment which a patient is required to obtain pursuant to this chapter.

(15) "Least restrictive alternative," "least restrictive alternative placement," "least restrictive environment," or "least restrictive appropriate care and treatment" means that which is the least restrictive available alternative, placement, environment, or care and treatment, respectively, within the limits of state funds specifically appropriated therefor.

(15.1) "Outpatient" means a person who is an alcoholic, drug dependent individual, or drug abuser and:

(A) Who is not an inpatient but who, based on the person's treatment history or recurrent lack of self-control regarding the use of alcoholic beverages, drugs, or any other substances listed in paragraph (8) of this Code section, will require outpatient treatment in order to avoid predictably and imminently becoming an inpatient;

(B) Who because of the person's current mental state and recurrent lack of self-control regarding the use of alcoholic beverages, drugs, or any other substances listed in paragraph (8) of this Code section or nature of the person's alcoholic behavior or drug dependency or drug abuse is unable voluntarily to seek or comply with outpatient treatment; and

(C) Who is in need of involuntary treatment.

(15.2) "Outpatient treatment" means a program of treatment for alcoholics, drug dependent individuals, or drug abusers outside a hospital facility setting which includes, without being limited to, medication and prescription monitoring, individual or group therapy, day or partial programming activities, case management services, and other services to alleviate or treat the patient's lack of self-control regarding the use of alcoholic beverages, drugs, or any other substances listed in paragraph (8) of this Code section so as to maintain the patient's semi-independent functioning and to prevent the patient's becoming an inpatient.

(16) "Patient" means any alcoholic, drug dependent individual, or drug abuser who seeks treatment under this chapter or any person for whom such treatment is sought.

(17) "Private facility" means any hospital facility that is a proprietary hospital or a hospital operated by a nonprofit corporation or association approved for the purposes of this chapter and a hospital facility operated by a hospital authority created pursuant to Article 4 of Chapter 7 of Title 31.

(17.1) "Psychologist" means a licensed psychologist who meets the criteria of training and experience as a health service provider psychologist as provided in Code Section 31-7-162.

(17.2) "Regional state hospital administrator" means the chief administrative officer of a state owned or state operated hospital and the state owned or operated community programs in a region. The regional state hospital administrator has overall management responsibility for the regional state hospital and manages services provided by employees of the regional state hospital and employees of state owned or operated community programs within a mental health, developmental disabilities, and addictive diseases region established in accordance with Code Section 37-2-3.

(18) "Representatives" means the persons appointed as provided in Code Section 37-7-147 to receive notice of the proceedings for voluntary or involuntary treatment.

(19) "Superintendent" means the chief administrative officer who has overall management responsibility at any facility, other than a regional state hospital or state owned or operated community program, receiving patients under this chapter or an individual appointed as the designee of such superintendent.

(20) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service

care, vocational rehabilitation, and career counseling, which may be extended to alcoholics, intoxicated persons, drug dependent individuals, and drug abusers.

(21) "Treatment facility" means a facility designated by the department to receive patients for treatment as provided in Part 3 of Article 3 of this chapter. (Code 1933, § 88-401, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 744, §§ 1-3; Ga. L. 1982, p. 3, § 37; Ga. L. 1983, p. 3, § 28; Ga. L. 1986, p. 1098, § 6; Ga. L. 1991, p. 1059, § 27; Ga. L. 1992, p. 6, § 37; Ga. L. 1992, p. 1902, § 15; Ga. L. 1993, p. 1445, § 17.7; Ga. L. 2002, p. 1324, § 1-15; Ga. L. 2009, p. 453, § 3-19/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, the second "alcoholic" was substituted for "alcholic" in paragraph (13).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

Law reviews. — For annual survey of law on labor and employment law, see 62 Mercer L. Rev. 181 (2010).

For comment on City of Macon v. Southern Bell Tel. & Tel. Co., 89 Ga. App. 252, 79 S.E.2d 265 (1953), see 17 Ga. B.J. 117 (1954). For comment on Burger v. State, 118 Ga. App. 328, 163 S.E.2d 333 (1968), see 5 Ga. St. B.J. 384 (1969). For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

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Cited in City of Macon v. Southern Bell Tel. & Tel. Co., 89 Ga. App. 252, 79 S.E.2d 265 (1953); Burger v. State, 118 Ga. App. 328, 163 S.E.2d 333 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 88 et seq., 96, 100. 45 Am. Jur. 2d, Intoxicating Liquors, § 14. 71 Am. Jur. 2d, State and Local Taxation, § 48.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 1, 2, 3, 16, 29, 30.

ALR. — Prosecution of chronic alcoholic for drunkenness offenses, 40 ALR3d 321.

37-7-2. Authority of board to issue regulations; powers of department generally.

(a) The board shall issue regulations to implement this chapter in accordance with the intent of this chapter to safeguard the rights of alcoholics, drug dependent individuals, or drug abusers, as set forth in Code Sections 37-7-100, 37-7-101, and 37-7-120, and Article 6 of this chapter.

(a.1) The board shall issue regulations to implement the provisions of Code Section 40-5-63.1 relative to clinical evaluations and substance abuse treatment programs and shall prescribe such application fees for providers desiring authorization to provide clinical evaluations or substance abuse treatment programs as are reasonably necessary to cover the cost of considering such applications. Such regulations shall provide for approval of providers and such approval shall be valid continuously unless and until revoked in accordance with such regulations.

(b) In addition to the other powers provided by this chapter, the department shall have the authority:

(1) To enforce the regulations issued by the board;

(2) To prescribe the forms of applications, records, medical certificates, and any other forms required or used under this chapter and the information required to be contained therein;

(3) To require such reports from any facility as it may find necessary to the performance of its duties or functions;

(4) To visit facilities regularly to review the hospitalization procedures applied to all patients;

(5) To determine the care and treatment being given all patients;

(6) To develop criteria for providing priority in access to services and admissions to programs for drug or alcohol dependent pregnant females;

(7) To investigate complaints and make reports and recommendations relative thereto; and

(8) To make effective such procedures and orders as may be appropriate to carry out the provisions of this chapter.

Notwithstanding the powers granted to the department under this Code section, the requirements of this Code section as to determination of treatment and care of patients and the investigation of complaints shall not apply to patients hospitalized in an institution operated by or under the control of the United States Department of Veterans Affairs

or any other federal agency. (Code 1933, § 88-406.1, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-407.1, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 977, § 3; Ga. L. 1997, p. 760, § 6.)

Editor's notes. — Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teenage and Adult Driver Responsibility Act.'"

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

37-7-3. Coordination of state drug and alcohol abuse programs.

All programs conducted by state agencies with respect to drug and alcohol abuse, except the regulation of the sale or dispensation of drugs and related products by the Board of Pharmacy pursuant to Georgia laws and the investigation of criminal conduct pertaining to illegal drugs transferred to the Department of Public Safety shall be coordinated by the Department of Behavioral Health and Developmental Disabilities; provided, however, that any other state agency is not precluded or prohibited from conducting an educational program relating to drug or alcohol abuse. (Ga. L. 1972, p. 1069, § 6; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that" for "provided, however," in this Code section.

37-7-4. Validity of hospitalization orders entered before September 1, 1978; establishment of regulations authorizing continued hospitalization of patients hospitalized before September 1, 1978.

No hospitalization of an alcoholic, drug dependent individual, or drug abuser lawful before September 1, 1978, shall be deemed unlawful because of the enactment of this chapter. The board is authorized to establish reasonable regulations to require that the chief medical officer of each treatment facility apply under Code Section 37-7-83 for an order authorizing continued hospitalization of any patient for whom such hospitalization is necessary and who was initially hospitalized under an order of a court prior to September 1, 1978. Such prior orders of hospitalization entered by the courts, unless superseded at an earlier date by an order under this chapter or unless such prior orders expire under their own terms at an earlier date, shall remain valid until March 1, 1979, after which all such orders shall be null and void and of no effect. (Code 1933, § 88-407.6, enacted by Ga. L. 1978, p. 1856, § 1.)

37-7-5. Immunity from liability for actions taken in good faith compliance with admission and discharge provisions of chapter.

Any physician, psychologist, peace officer, attorney, or health official, or any hospital official, agent, or other person employed by a private hospital or at a facility operated by the state, by a political subdivision of the state, or by a hospital authority created pursuant to Article 4 of Chapter 7 of Title 31, who acts in good faith in compliance with the admission and discharge provisions of this chapter shall be immune from civil or criminal liability for his actions in connection with the admission of a patient to a facility or the discharge of a patient from a facility. (Code 1933, § 88-402.23, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1981, p. 996, § 1.)

Cross references. — Liability of law enforcement officers for actions taken at scene of emergency, § 35-1-7. Employment and training of peace officers, T. 35, C. 8. Physicians generally, T. 43, C. 34. Psychologists generally, T. 43, C. 39.

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No immunity for actions not in good faith. — O.C.G.A. § 37-7-5 bestows only qualified immunity on a physician for the execution of a certificate. Thus, a malpractice suit is not barred inasmuch as the physician is liable for actions not taken in good faith. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

37-7-6. Apprehension by peace officer of patient who leaves facility without permission.

If, during the period of involuntary hospitalization pursuant to any valid physician's certificate, court order, or order by the hearing examiner authorized by this chapter, a patient escapes or otherwise leaves a facility without permission, the facility may advise any peace officer that the patient has escaped or otherwise left the facility without permission; and the peace officer shall be authorized to take such patient into custody and return him to such facility. (Code 1933, § 88-407.9, enacted by Ga. L. 1979, p. 744, § 11.)

37-7-7. Approval of private facilities as emergency receiving facilities, evaluating facilities, or treatment facilities; powers and duties of private facilities; right to deny admission.

Any private facility within this state may be approved as an emergency receiving facility, an evaluating facility, or a treatment facility by the department at the request of or with the consent of the governing officers of such private facility. When so approved, the private facility shall have all powers given to the corresponding type of state owned or

state operated facility under the provisions of this chapter on voluntary admission, emergency admission, admission for evaluation, and involuntary hospitalization and shall have all duties and obligations of such facilities imposed by this chapter, except that any such private facility may decline to accept any patient who is unable to pay it for hospitalization or for whom it has no available space. (Code 1933, § 88-407.5, enacted by Ga. L. 1978, p. 1856, § 1.)

37-7-8. "Drug" defined; Right of minor to obtain treatment of drug abuse on his consent alone; binding effect of consent; informing minor's parent, spouse, custodian, or guardian of treatment.

(a) As used in this Code section, the term "drug" means any drug as defined in Code Section 26-3-2, any dangerous drug as defined in Code Section 16-13-71, any controlled substance as defined in Code Section 16-13-21, and any narcotic drug as defined in Code Section 16-13-21.

(b) The consent to the provision of medical or surgical care or services by a hospital or public clinic or to the performance of medical or surgical care or services by a physician licensed to practice medicine and surgery, when such consent is given by a minor who is or professes to be suffering from drug abuse, shall be as valid and binding as if the minor had achieved his majority, provided that any such treatment shall involve procedures and therapy related to conditions or illnesses arising out of the drug abuse which gave rise to the consent authorized under this Code section. Any such consent shall not be subject to later disaffirmance by reason of minority. The consent of no other person or persons, including but not limited to a spouse, parent, custodian, or guardian, shall be necessary in order to authorize the provision to such minor of such medical or surgical care or services as are described in this subsection.

(c) Upon the advice and direction of a treating physician or, if more than one, of any one of them, a member of the medical staff of a hospital or public clinic or a physician licensed to practice medicine and surgery may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor as to the treatment given or needed. Such information may be given to or withheld from the spouse, parent, custodian, or guardian without the consent of the minor patient and even over the express refusal of the minor patient to the providing of such information. (Ga. L. 1971, p. 337, §§ 1-3.)

Cross references. — Giving of consent for surgical or medical treatment generally, T. 31, C. 9. Right of minor to obtain medical, surgical, or other treatment for venereal disease on minor's consent alone, § 31-17-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 1, 2, 4, 6, 18. 59 Am. Jur. 2d, Parent and Child, § 71.

C.J.S. — 28 C.J.S., Drugs and Narcotics, §§ 1, 2.

ALR. — Transplantation: power of parent, guardian, or committee to consent to surgical invasion of ward's person for benefit of another, 35 ALR3d 692.

Propriety of surgically invading incompetent or minor for benefit of third party, 4 ALR5th 1000.

ARTICLE 2

HOSPITALIZATION AND TREATMENT OF VOLUNTARY PATIENTS

37-7-20. Admission of voluntary patients; parental consent to treatment; giving notice of rights to patient at time of admission.

(a) The chief medical officer of any facility may receive for observation and diagnosis any patient 12 years of age or older making application therefor, any patient under 18 years of age for whom such application is made by his parent or guardian, and any patient who has been declared legally incompetent and for whom such application is made by his guardian. If found to show evidence of alcoholism, drug dependence, or drug abuse and to be suitable for treatment, such person may be given care and treatment at such facility; and such person may be detained by such facility until discharged pursuant to Code Section 37-7-21 or 37-7-22. The parents or guardian of a minor child must give written consent to such inpatient treatment. An individualized treatment plan shall be developed for such person as soon as possible.

(b) Any individual voluntarily admitted to a facility under this Code section shall be given notice of his rights under this chapter at the time of his admission. (Code 1933, § 88-404.1, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-403.1, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 744, § 6.)

Cross references. — Giving of consent for surgical or medical treatment generally, T. 31, C. 9.

JUDICIAL DECISIONS

Involuntary treatment. — One who is admitted under subsection (a) of O.C.G.A. § 37-7-20 can be treated while remaining a voluntary patient, and the reference in subsection (a) to voluntary patients under "subsection (a) of Code Section 37-7-20" includes those who admit themselves for treatment. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999).

Standards for involuntary retention of alcoholic patients are found in O.C.G.A.

§ 37-7-22 and by that section's references to O.C.G.A. §§ 37-7-41, 37-7-61, and 37-7-81. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999).

Discharge of voluntary patient. — O.C.G.A. § 37-7-22(a) applies to the discharge of patients voluntarily admitted for treatment under subsection (a) of O.C.G.A. § 37-7-20, as well as voluntary patients admitted for evaluation or observation. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999), reversing Wingate v. Ridgeview Inst., Inc., 233 Ga. App. 649, 504 S.E.2d 714 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 89, 90, 91.

37-7-21. Discharge of voluntary patients upon recovery or termination of need for hospitalization; notice of discharge.

(a) The chief medical officer of the facility shall discharge any voluntary patient who has recovered from his alcoholism, drug dependency, or drug abuse or who has sufficiently improved that the chief medical officer determines, after consideration of the recommendations of the treatment team, that hospitalization of the patient is no longer necessary, provided that in no event shall any such patient be so discharged if, in the judgment of the chief medical officer of such facility, such discharge would be unsafe for the patient or others. The chief medical officer may designate in writing a physician or psychologist, who may be the attending physician or treating psychologist, to make these discharge decisions. If the decision of the designee is contrary to the recommendations of the treatment team or a physician or psychologist member of the treatment team, the issue must go to the chief medical officer for final determination. Where there is concurrence, the decision of the designee will be final.

(b) Notice of discharge of patients who have been transferred from involuntary to voluntary status shall be given pursuant to Code Section 37-7-24. (Code 1933, § 88-404.2, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-403.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1991, p. 1059, § 4; Ga. L. 1992, p. 1902, § 16.)

37-7-22. Right of voluntary patient to discharge upon application; procedure on denial of application for discharge; notice of discharge.

(a) A voluntary patient, other than a minor child for whom admission has been sought by his parents or guardian, who has admitted himself to a facility pursuant to subsection (a) of Code Section 37-7-20 or any voluntary patient's personal representative, legal guardian, parent, spouse, attorney, or adult next of kin may request such patient's

discharge in writing at any time after his admission. If the patient was admitted on his own application and the request for discharge is made by a person other than the patient, the discharge shall be conditioned upon the agreement of the patient thereto, unless such other person is the legal guardian of the patient's person. The request for discharge may be submitted to the chief medical officer or to any staff physician or staff psychologist or staff registered nurse of the facility for transmittal to the chief medical officer. If the patient or another on his behalf makes an oral request for release to any member of the staff or other service provider, the patient must within 24 hours be given assistance in preparing a written request. The person to whom a written request is submitted shall deliver the request to the chief medical officer within 24 hours, Saturdays, Sundays, and legal holidays excluded. Within 72 hours, excluding Sundays and legal holidays, of the delivery of a written request for release to the chief medical officer, the patient must be discharged from the facility, unless the chief medical officer finds that the discharge would be unsafe for the patient or others, in which case proceedings for involuntary treatment must be initiated under either Code Section 37-7-41, Code Section 37-7-61, or Code Section 37-7-81.

(b) Notice of discharge of patients who have been transferred from involuntary to voluntary status shall be given pursuant to Code Section 37-7-24. (Code 1933, § 88-404.3, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-403.3, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1983, p. 3, § 28; Ga. L. 1991, p. 1059, § 28.)

JUDICIAL DECISIONS

Applicability of section. — Subsection (a) of O.C.G.A. § 37-7-22 applies to the discharge of patients voluntarily admitted for treatment under O.C.G.A. § 37-7-20(a), as well as voluntary patients admitted for evaluation or observation. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999).

Certificate used to initiate involuntary treatment proceedings complied with the requirements of subsection (a) of O.C.G.A. § 37-7-22 when the certificate contained a finding that a patient was incapacitated by alcohol on a recurring basis; therefore, the patient's claim for false imprisonment would not lie since the patient's detention was predicated on a valid process. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999).

Involuntary treatment proceedings initiated by use of a form patterned on O.C.G.A. § 37-7-81(a) and based on findings that the patient was incapacitated by alcohol on a recurring basis satisfied the requirements of subsection (a) of O.C.G.A. § 37-7-22. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999).

Involuntary treatment. — Standards for involuntary retention of alcoholic patients are found in subsection (a) of O.C.G.A. § 37-7-22 and by the references to O.C.G.A. §§ 37-7-41, 37-7-61, and 37-7-81. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999).

37-7-23. Giving voluntary patients periodic notice of rights.

At the time of his admission and each six months thereafter, any voluntary patient admitted to a facility under Code Section 37-7-20 or transferred to voluntary status under Code Section 37-7-24 shall be notified in writing of his right to discharge upon application under Code Section 37-7-22 and of all other rights granted to patients under this chapter. (Code 1933, § 88-404.4, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-403.4, enacted by Ga. L. 1978, p. 1856, § 1.)

37-7-24. Transfer of involuntary patients to voluntary status; notice of transfer and of discharge of patients so transferred; discharge of transferred patient charged with criminal offense.

Any involuntary patient may apply to be transferred to voluntary status of hospitalization and shall be so transferred if he is able to understand and exercise the rights and powers of a voluntary patient unless the chief medical officer finds that this would not be in the best interest of the patient, which finding shall be entered in the patient's clinical record and signed by the chief medical officer. In any case in which such transfer to voluntary status occurs and in any case in which a patient transferred to voluntary status is discharged, notice of such transfer or discharge, as the case may be, shall be given to the patient and his representatives; if the patient's hospitalization was ordered by the court, to the court which entered such order; if the patient was admitted to a facility under subsection (a) of Code Section 37-7-41, to the physician or psychologist executing the certificate; and, if the patient was under criminal charges, of which the facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient. An involuntary patient transferred to voluntary status, which patient is under criminal charges, notice of which charges have been given in writing to the facility, may only be discharged into the physical custody of the law enforcement agency originally having custody of the patient. Such agency shall assume such custody within five days after the mailing of notification to the agency pursuant to this Code section. (Code 1933, § 88-403.5, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 744, § 7; Ga. L. 1991, p. 1059, § 29; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 89 et seq.

ARTICLE 3

EXAMINATION, HOSPITALIZATION, AND TREATMENT OF INVOLUNTARY PATIENTS

Cross references. — Transfer of inmates who are alcoholics from county correctional institutions to department, § 42-5-52.

PART 1

EMERGENCY RECEIVING FACILITIES FOR EXAMINATION OF PERSONS APPREHENDED PURSUANT TO PHYSICIAN'S CERTIFICATE OR COURT ORDER

37-7-40. Designation by department of emergency receiving facilities.

Any state owned or state operated facility may be designated by the department as an emergency receiving facility. The department shall maintain an emergency receiving facility at each Georgia regional hospital which shall accept, under Code Sections 37-7-41 through 37-7-44, patients found in any county in the service region of the hospital. Any other facility within the State of Georgia may be so designated by the department at the request of or with the consent of the governing officers of the facility. (Code 1933, § 88-404.6, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-404.1, enacted by Ga. L. 1978, p. 1856, § 1.)

JUDICIAL DECISIONS

Cited in Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

RESEARCH REFERENCES

ALR. — Hospital's liability as to diagnosis and care of patients brought to emergency ward, 72 ALR2d 396.

37-7-41. Emergency involuntary treatment; who may certify need; delivery for examination; report of delivery required.

(a) Any physician within this state may execute a certificate stating that he has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. A physician's certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

(b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such person into custody and deliver him forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. The court order shall expire seven days after it is executed.

(c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which such person was taken into custody. The report and either the physician's certificate or court order authorizing such custody shall be made a part of the patient's record.

(d) Any psychologist, clinical social worker, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, or a clinical nurse specialist in psychiatric/mental health acting under this

Code section. For purposes of this subsection, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist, the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker, and the term "clinical nurse specialist in psychiatric/mental health" means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health. (Code 1933, § 88-404.7, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-404.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1981, p. 996, § 2; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 2531, § 2; Ga. L. 1994, p. 1249, § 2.)

Cross references. — Arrest of persons, T. 17, C. 4. Licensing of applied psychologists, T. 43, C. 39.

Law reviews. — For survey article on torts, see 34 Mercer L. Rev. 271 (1982). For survey article on construction law, see 59 Mercer L. Rev. 55 (2007).

For note, "The Diversion of Drug Abusers from the Criminal Justice System: Georgia's Proposed Legislation," see 23 Emory L.J. 1071 (1974).

For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Drug and alcohol abusers concern both state and its citizens. — O.C.G.A. Ch. 7, T. 37 provides citizens with the means of protecting themselves from those persons suffering from alcohol or drug related problems, as well as at the same time helping those who, because of their problem, are unable to help themselves. Such concern and conduct is simply not the exclusive province of the state, and O.C.G.A. § 37-7-41 merely is a way for an ordinary citizen to manifest his or her interest in a positive way. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Presence of state action in initiating involuntary examination. — Subjugation of an individual for an involuntary examination is not dependent upon a physician's certificate. Laymen may, by way of affidavits, initiate the process leading to an examination as well, although in not as a direct a manner as physicians. Secondly, physicians are not compelled by the state to sign certificates. Both of these factors militate against the finding of state action against a doctor to support an action under 42 U.S.C. § 1983. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Because O.C.G.A. § 37-7-41 permits ordinary citizens other than doctors to initiate the process for securing examinations, the suggestion of state action under the theory of performing a "public function" is weakened, if not eliminated. Otherwise, the actions of laymen would be subjected to the label of state action. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Physician's training and penalties for abuse safeguard interests of examinee. — There are incentives not to abuse the authority of O.C.G.A. § 37-7-41 that are not applicable to a layman, such as, perhaps, the loss of the license to practice medicine for professional misconduct or the possibility of being sued for malpractice. By allowing a physician to bypass the necessity of obtaining a court order, the General Assembly implicitly recognized that a physician's training, expertise, and professionalism qualify the physician to make a judgment in the best interests of a person to which a court could add but little, if anything. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Procedures under subsections (a) and (b) compared. — Procedural differ-

ences of subsections (a) and (b) of O.C.G.A. § 37-7-41 do not detract from the private nature of the conduct permitted by those subsections. The beliefs of laymen, grounded on credible observations, are sufficient to warrant a court ordered examination. The fact that a court makes the final decision should not be viewed as meaning that the nature of a physician's conduct, in the context of subsection (a), is equal to that of the court in terms of state action. The distinction in procedure is justified since it is rare that laymen are qualified to make medical judgments. The presence, or rather, the interposition, of the court serves as a shield to guard against malicious or vexatious attempts to harass a person by subjecting the person to needless examinations. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Certificate requirement set forth in O.C.G.A. § 37-7-41 is essential; the certificate provides a safeguard against unilateral involuntary confinement of an individual. Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

When peace officer not necessary under subsection (a). — Peace officer's involvement is not a necessary prerequisite to compliance with subsection (a) of O.C.G.A. § 37-7-41 since if a person happens to be present at a treatment facility, a peace officer is not needed to bring that person to a facility. Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

Discretion of physician as to issuance of certificate. — State does not reward a physician for executing a certificate or punish a physician for failing to sign one. The language of this section clearly states that "Any physician ... may execute a certificate ..." and in no manner implies that the execution of the certificate is mandatory. Obviously, the physician enjoys discretion in the matter. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Power under certificate is very limited, despite involuntary aspects. — Consequence of a certificate is nothing more than an examination, albeit involuntary. The power of a certificate is very limited. It does not commit a person for treatment. It merely subjects a person to any emergency care that may be required and an examination by the state to confirm or reject the beliefs stated in the certificate. Once a person is admitted to a receiving facility, an examination must be made by a state doctor within 24 hours. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Concurring opinion of two physicians is prerequisite to involuntary confinement. — To justify an individual's involuntary detention or confinement, subsection (a) of O.C.G.A. § 37-7-41 and O.C.G.A. § 37-7-43 require a concurring opinion of two physicians that a patient requires involuntary treatment. The first physician's diagnosis and certificate that an individual is in need of treatment authorizes involuntary taking of that person to an emergency receiving facility to undergo, within 24 hours, an examination by a second physician. If upon that second examination the examining physician concludes that the patient is in need of or requires treatment, then that patient can be legally confined in an evaluation facility without his or her consent. Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

Decision to commit ultimately rests with state, not private physician. — Decision to refer a person for further evaluation and, perhaps, for treatment rests with the state and the state alone. A private physician cannot commit someone, in the usual sense of the word, solely by a certificate. Basically, the certificate simply initiates the state's involvement and is not of and in itself the point of origin of state action. Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

Order does not authorize full inventory search. — Drug evidence found in a defendant's pocket by a police officer who was executing a civil order to apprehend the defendant for a mental health evaluation under O.C.G.A. §§ 37-3-41(a) and 37-7-41(b) should have been suppressed because the search in which the officer found the evidence did not come within the ambit of allowable inventory searches; no full inventory search was authorized on the basis that the defendant was to be transported in a patrol car

to the location of the evaluation. Lindsey v. State, 282 Ga. App. 644, 639 S.E.2d 584 (2006).

Search of a civil detainee under O.C.G.A. §§ 37-3-41(a) and 37-7-41(b) before being placed in a patrol car, absent some valid reason for the officer conducting the search to take custody of the clothing, container, or bag searched, does not come within the ambit of allowable inventory searches because such an inventory presupposes some valid reason for taking custody of the object being searched; an inventory search which is not necessary to achieve the recognized custodial goals of such a search is not permissible, and no controlling precedent authorizes a full inventory search on the basis that a detainee will be transported to another location in a patrol car for a mental health evaluation. Lindsey v. State, 282 Ga. App. 644, 639 S.E.2d 584 (2006).

RESEARCH REFERENCES

ALR. — Validity and construction of statutes providing for civil commitment of arrested narcotic addicts, 98 ALR2d 726.

37-7-42. Emergency admission of persons arrested for penal offenses; report by officer; entry of report into clinical record.

(a) A peace officer may take any person to a physician within the county or an adjoining county for emergency examination by the physician, as provided in Code Section 37-7-41, or directly to an emergency receiving facility if the person is committing a penal offense and the peace officer has probable cause for believing that the person is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. The peace officer need not formally tender charges against the individual prior to taking the individual to a physician or an emergency receiving facility under this Code section. The peace officer shall execute a written report detailing the circumstances under which the person was taken into custody; and this report shall be made a part of the patient's clinical record.

(b) Any psychologist may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist acting under this Code section. For purposes of this subsection, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist. (Code 1933, § 88-404.3, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1981, p. 996, § 2; Ga. L. 1987, p. 3, § 37.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, "physician" was substituted for "physican" following "examination by the" in the first sentence of subsection (a).

Cross references. — Arrest of persons, T. 17, C. 4. Licensing of applied psychologists, T. 43, C. 39.

OPINIONS OF THE ATTORNEY GENERAL

When provisions of chapter to be followed. — Drug addicts and alcoholics may be treated at local facilities or hospitals whenever their condition warrants, but in order to have such a person committed for pretrial confinement in a state operated facility, the provisions of Ga. L. 1971, p. 273 (see O.C.G.A. Ch. 7, T. 37) must be followed. 1974 Op. Att'y Gen. No. U74-85.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Subtances, §§ 92 et seq., 98.

37-7-43. Procedure upon admission; notice of proposed discharge.

(a) A patient who is admitted to an emergency receiving facility shall be examined by a physician as soon thereafter as possible but in any event within 48 hours and may be given such emergency treatment as is indicated by good medical practice. The patient must be discharged within 48 hours of his admission unless:

(1) An examining physician or psychologist concludes that there is reason to believe that the patient may be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment and executes a certificate to that effect within such time; or

(2) The patient is under criminal charges, notice of which has been given in writing to the facility, in which case the provisions of Code Section 37-7-95 shall apply.

Nothing in this chapter shall be construed to prohibit a physician or psychologist who previously executed a certificate authorized by the provisions of this chapter from executing any other certificate provided for in this chapter for the same or any other patient.

(b) Within 24 hours of the execution of the certificate under paragraph (1) of subsection (a) of this Code section, the patient shall be transported, as provided in Code Section 37-7-101, to an evaluating facility where he shall be received pursuant to Code Section 37-7-63 unless the patient has been determined and certified to meet all of the outpatient treatment requirements of paragraphs (1), (2), and (3) of subsection (c) of Code Section 37-7-90, in which event the patient shall be discharged under the conditions provided in Code Section 37-7-91, except that if the patient is under criminal charges, notice of which has been given in writing to the facility, the provisions of Code Section 37-7-95 shall apply.

(c) Notice of any proposed discharge shall be given to the patient and his representatives; if the patient was admitted to the facility under

subsection (a) of Code Section 37-7-41, to the physician or psychologist who executed the certificate; if the patient was admitted to the facility under subsection (b) of Code Section 37-7-41, to the court which issued the order; and if the patient was under criminal charges, written notice of which had been given to the facility, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient. (Code 1933, §§ 88-404.8, 88-404.9, enacted by Ga. L. 1971, p. 273, § 1; Ga. L. 1977, p. 1293, § 5; Code 1933, §§ 88-404.4, 88-404.5, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1982, p. 937, §§ 2, 10; Ga. L. 1985, p. 1024, § 4; Ga. L. 1986, p. 1098, § 7; Ga. L. 1991, p. 1059, § 30; Ga. L. 1992, p. 1902, § 17; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Arrest of persons, T. 17, C. 4.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For survey article on torts, see 34 Mercer L. Rev. 271 (1982).

For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Concurring opinion of two physicians is prerequisite to involuntary confinement. — To justify an individual's involuntary detention or confinement, O.C.G.A. §§ 37-7-41(a) and 37-7-43 require a concurring opinion of two physicians that a patient requires involuntary treatment. The first physician's diagnosis and certificate that an individual is in need of treatment authorizes involuntary taking of that person to an emergency receiving facility to undergo, within 24 hours, an examination by a second physician. If upon that second examination the examining physician concludes that the patient is in need of or requires treatment, then that patient can be legally confined in an evaluation facility without his or her consent. Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

Cited in Watkins v. Roche, 529 F. Supp. 327 (S.D. Ga. 1981).

37-7-44. Giving patient and his representatives notice of their rights upon patient's admission to emergency receiving facility.

(a) Immediately upon arrival of a patient at an emergency receiving facility under Code Section 37-7-43, the facility shall give the patient written notice of his right to petition for a writ of habeas corpus or for a protective order under Code Section 37-7-148. This written notice shall also inform the patient that he has a right to legal counsel and that, if the patient is unable to afford counsel, the court will appoint counsel.

(b) The notice informing the patient's representatives of the patient's hospitalization in an emergency receiving facility shall include a clear

notification that the representatives may petition for a writ of habeas corpus or for a protective order under Code Section 37-7-148. (Code 1933, § 88-404.10, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-404.6, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1986, p. 1098, § 7.)

Cross references. — Arrest of persons, T. 17, C. 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 96 et seq.

ALR. — Hospital's liability as to diagnosis and care of patients brought to emergency ward, 72 ALR2d 396.

PART 2

EVALUATING FACILITIES FOR EXAMINATION OF PERSONS ORDERED TO UNDERGO EVALUATION FOR MENTAL ILLNESS

37-7-60. Designation of evaluating facilities.

Any state owned or state operated facility may be designated by the department as an evaluating facility. The department shall maintain an evaluating facility at each Georgia regional hospital which shall accept, under Code Sections 37-7-61 through 37-7-65, patients found in any county in the service region of the hospital designated by the department. Any other facility within the State of Georgia may be so designated by the department at the request of or with the consent of the governing officers of the facility. (Code 1933, § 88-404.11, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-405.1, enacted by Ga. L. 1978, p. 1856, § 1.)

37-7-61. Petition for court ordered evaluation.

Proceedings for a court ordered evaluation may be initiated in the following manner:

(1) Any person may file an application executed under oath with the community mental health center for a court ordered evaluation of a person located within that county who is alleged by such application to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. Upon the filing of such application, the community mental health center shall make a preliminary investigation and, if the investigation shows that there is probable cause to believe that such allegation is true, it shall file a petition with the court in the county where the patient is located seeking an involuntary admission for evaluation; and

(2) Any person may file with the court a petition executed under oath alleging that a person within the county is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. The petition must be accompanied by the certificate of a physician or psychologist stating that he has examined the patient within the preceding five days and has found that the patient may be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment and that a full evaluation of the patient is necessary. (Code 1933, § 88-404.12, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-405.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1991, p. 1059, § 31; Ga. L. 1993, p. 1445, § 17.8.)

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 90, 91.

37-7-62. Hearing on petition for court ordered evaluation; notice; appointment of representatives; patient's right to counsel; waiver of hearing by patient; procedure upon issuance of order for evaluation.

(a) The court shall review the petition filed under Code Section 37-7-61 and if the court finds reasonable cause to believe that the patient may be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, the court shall hold a full and fair hearing on the petition no sooner than ten days and no later than 15 days after such petition is filed. Within five days after the filing of such petition, the court shall serve notice of the hearing upon the patient and his representatives and upon the petitioner. Representatives for the patient shall be appointed pursuant to Code Section 37-7-147, provided that the court shall designate the second represen-

tative or, in the absence of designation of one representative by the patient, both representatives; and, in the absence of such representatives or if the department is the guardian, the court shall appoint a guardian ad litem who is not the department. The notice required by this Code section shall include the time and place of the hearing; notice of the patient's right to counsel, that the patient or his representatives may apply for court appointed counsel if the patient cannot afford counsel, and that the court will appoint counsel unless the patient indicates in writing that he does not wish to be represented by counsel; and notice that the patient may waive his rights to a hearing under this Code section. A copy of the petition filed under Code Section 37-7-61 shall be attached to the notice. The patient shall have a right to counsel. If the patient is unable to afford counsel, the court shall appoint counsel for the patient unless the patient indicates in writing that he does not desire to be represented by counsel. The hearing may be waived by the patient after appointment or waiver of counsel.

(b) After a full and fair hearing or, if the hearing is waived, after a full review of the evidence, if the court is satisfied that immediate evaluation is necessary, the court shall issue an order to any peace officer to deliver the patient forthwith to the evaluating facility designated by the department to admit persons ordered by that court to be evaluated. (Code 1933, § 88-404.13, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-405.3, enacted by Ga. L. 1978, p. 1856, § 1.)

Cross references. — Guardians of incapacitated adults, T. 29, C. 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 96, 97.

37-7-63. Admission of persons to evaluating facilities for evaluation and emergency treatment.

Any person who is brought to an evaluating facility under Code Section 37-7-43 or under a court order as provided in Code Section 37-7-62 shall be received for evaluation and such treatment as is indicated by good medical practice. (Code 1933, § 88-404.14, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-405.4, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1982, p. 3, § 37.)

JUDICIAL DECISIONS

Cited in Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 89 et seq.

37-7-64. Length of period of detention in evaluating facility; discharge; procedure upon determination of need for hospitalization or involuntary treatment; notice of discharge from evaluating facility.

(a) A patient who has been admitted to an evaluating facility pursuant to Code Section 37-7-43, 37-7-63, or subparagraph (a)(3)(B) of Code Section 37-7-81.1 may be detained for a period not to exceed five days, Saturdays, Sundays, and holidays excluded. The patient shall be discharged upon a finding that the patient is not an alcoholic, a drug dependent person, or a drug abuser requiring involuntary treatment or upon a finding and certification that the patient meets all of the outpatient treatment requirements of paragraphs (1), (2), and (3) of subsection (c) of Code Section 37-7-90, in which event a patient meeting those outpatient treatment requirements shall be discharged under the conditions provided in Code Section 37-7-91 but, in any event, upon the expiration of the five-day evaluation period unless:

(1) Within that period:

(A) The patient is admitted as a voluntary patient under Code Section 37-7-20; or

(B) The patient is admitted for involuntary inpatient treatment under Code Section 37-7-81; or

(2) The patient is under criminal charges, notice of which has been given in writing to the facility, in which case the provisions of Code Section 37-7-95 shall apply.

(b) If hospitalization appears desirable, the staff physicians or psychologists of the evaluating facility shall encourage the patient to apply for voluntary hospitalization unless the attending physician or treating psychologist finds that the patient is unable to understand the nature of voluntary hospitalization, that voluntary hospitalization would be harmful to the patient, or that the patient is determined to be an alcoholic, a drug dependent individual, or a drug abuser in need of involuntary treatment, which finding shall be entered in the patient's record.

(c) If, after evaluation of the patient, it is determined by the chief medical officer that proceedings for involuntary treatment of the patient should be initiated pursuant to Code Section 37-7-81 or pursuant to Part 4 of this article, the chief medical officer shall direct that an

individualized treatment plan be developed for that patient during the five-day period that he is detained for evaluation in the facility.

(d) Notice of the discharge shall be given to the patient and his representatives; to the person who filed the petition; if the patient was admitted to the evaluating facility from an emergency receiving facility under Code Section 37-7-43, to the physician or psychologist who executed the certificate or to the court which issued the order pursuant to Code Section 37-7-41; if the patient was under criminal charges of which the facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient; and, if the patient was admitted to the evaluating facility under Code Section 37-7-62, to the court that ordered the evaluation. (Code 1933, §§ 88-404.15, 88-404.16, enacted by Ga. L. 1971, p. 273, § 1; Ga. L. 1977, p. 1293, § 6; Code 1933, §§ 88-405.5, 88-405.6, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1986, p. 1098, § 8; Ga. L. 1987, p. 3, § 37; Ga. L. 1991, p. 1059, § 32; Ga. L. 1992, p. 1902, § 18; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 91.

37-7-65. Request for transfer to another evaluating facility; direction of notice of transfer.

Any patient admitted to an evaluating facility may apply to the chief medical officer of that facility for transfer at his own expense to any other approved evaluating facility. If the evaluating facility to which transfer is requested agrees to admit the patient and if the patient is able to pay for evaluation at such facility, he shall be transferred forthwith. In such case, Code Section 37-7-64 shall apply; and the time periods specified shall be counted from the date of admission to the evaluating facility to which the patient is transferred. Notice of the transfer shall be given to the patient's representatives; to the person who filed the original petition, if any; if the patient was admitted to the evaluating facility from an emergency receiving facility under Code Section 37-7-43, to the physician or psychologist who executed the certificate or to the court which issued the order pursuant to Code Section 37-7-41; if the patient was under criminal charges of which the facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient; and, if the patient was admitted to the evaluat-

ing facility under Code Section 37-7-62, to the court that ordered the evaluation. (Code 1933, § 88-404.17, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-405.7, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1992, p. 1902, § 19; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Part 3

Determination of Need for Treatment, Admission to Treatment Facilities

37-7-80. Designation of treatment facilities.

Any state owned or state operated facility may be designated by the department as a treatment facility. The department shall maintain a treatment facility at each regional hospital which shall accept patients found in any county in the service region of the hospital. Any other facility within the State of Georgia may be so designated by the department at the request of or with the consent of the governing officers of the facility. (Code 1933, § 88-404.19, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-406.1, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1986, p. 1098, § 9.)

37-7-81. Procedure for detention of patient beyond evaluation period; hearing.

(a) The patient may be detained at a facility beyond the evaluation period unless voluntary hospitalization is sought under subparagraph (a)(1)(A) of Code Section 37-7-64 only upon the recommendation of the chief medical officer of an evaluating facility where the patient has been examined under Part 2 of this article, which recommendation is supported by the opinions of two physicians or a physician and a psychologist who have personally examined the patient within the preceding five days and who agree that the patient is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment but who does not meet the outpatient treatment requirements of paragraphs (1), (2), and (3) of subsection (c) of Code Section 37-7-90. Such recommendation of the chief medical officer and the opinions of the physicians or physician and psychologist shall be entered on a certificate. The certificate shall be filed along with a petition for a hearing in the court of the county in which the patient is being detained for evaluation. Nothing in this chapter shall be construed to prohibit a physician or psychologist or a chief medical officer who has previously executed any other certificate authorized by the

provisions of this chapter from executing a certificate provided for in this Code section for the same or any other patient. The certificate and petition shall be filed within five days, Saturdays, Sundays, and holidays excluded, after the patient is admitted to a facility for evaluation under Code Section 37-7-63. Such filing shall authorize the detention of the patient by the facility pending completion of a full and fair hearing under this Code section. Copies of the certificate shall be served on the patient and his representatives within five days after the certificate is filed and shall be accompanied by:

(1) A notice that a hearing will be held and the time and place thereof;

(2) A notice that the patient has a right to counsel, that the patient or his representatives may apply immediately to the court to have counsel appointed if the patient cannot afford counsel, and that in such case the court will appoint counsel for the patient unless the patient indicates in writing that he does not desire to be represented by counsel;

(3) A copy of the individualized treatment plan developed by the facility under this chapter shall be sent to the patient and shall be sent to the patient's representative if requested by such representative. Notice of the right to receive such plan shall be given to the representatives at the time the treatment plan is sent to the patient;

(4) A notice that the patient has a right to be examined by a physician or psychologist of his own choice at his own expense and to have that physician or psychologist submit a suggested treatment plan for the patient which conforms with the requirements of paragraph (14) of Code Section 37-7-1; and

(5) A notice that the patient may waive in writing the hearing described in subsection (c) of this Code section.

(b) If the hearing is waived, the certificate shall serve as authorization for the patient to begin treatment under the terms of the individualized treatment plan; and the chief medical officer of the facility where the patient is located shall be responsible for the supervision of the treatment plan.

(c) In any case in which a patient is retained in an evaluating facility pursuant to a petition filed under subsection (a) of this Code section, the court shall hold a full and fair hearing as provided in Code Section 37-7-81.1 unless the hearing is waived in writing by the patient. The hearing shall be held no sooner than seven days and no later than 12 days after the petition is filed with the court. (Code 1933, §§ 88-404.20, 88-404.21, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-406.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 744, § 8; Ga. L.

1982, p. 937, §§ 3, 11; Ga. L. 1983, p. 3, § 28; Ga. L. 1985, p. 1024, § 5; Ga. L. 1986, p. 1098, § 9; Ga. L. 1991, p. 1059, § 33; Ga. L. 1992, p. 1902, § 20.)

Cross references. — Criminal penalty for malicious confinement of sane person in asylum, § 16-5-43.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "this article" was substituted for "Article 3 of this chapter" in the first sentence of subsection (a).

JUDICIAL DECISIONS

Compliance with procedures. — Involuntary treatment proceedings initiated by use of a form patterned on subsection (a) of O.C.G.A. § 37-7-81 and based on findings that the patient was incapacitated by alcohol on a recurring basis satisfied the requirements of O.C.G.A. § 37-7-22(a). Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999), reversing Wingate v. Ridgeview Inst., Inc., 233 Ga. App. 649, 504 S.E.2d 714 (1998).

Cited in Hudgins v. Bawtinhimer, 196 Ga. App. 386, 395 S.E.2d 909 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 90, 93, 96, 97.

ALR. — Validity and construction of statutes providing for civil commitment of arrested narcotic addicts, 98 ALR2d 726.

37-7-81.1. Disposition of patient upon hearing.

(a) At those hearings required under subsection (c) of Code Section 37-7-81 and subsection (a) of Code Section 37-7-92, the court shall determine whether the patient is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment and, if so, whether the patient is an inpatient or outpatient and, unless otherwise provided in this subsection, the type of involuntary treatment the patient should be ordered to obtain. At such hearing, if the court determines:

(1) That the patient is not an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, the court shall order that the patient be immediately discharged;

(2) That the patient is an outpatient, the court shall further determine, based upon either the individualized treatment plan required to be prepared under subsection (c) of Code Section 37-7-64 or subsection (b) of Code Section 37-7-91 or the individualized treatment plan proposed by the physician or psychologist chosen by the patient, whether there is available outpatient treatment for the patient which meets the requirements of the plan chosen by the court and whether the patient will likely obtain that treatment so as to minimize the likelihood of the patient's becoming an inpatient. If the court determines that there is such available outpatient treatment

which the patient will likely obtain so as to minimize the likelihood of the patient's becoming an inpatient, then the court shall order the patient to obtain that treatment and shall discharge the patient subject to such order;

(3) That the patient is an outpatient who does not meet the requirements for discharge under paragraph (2) of this subsection and:

(A) The patient has been admitted to either an evaluating or treatment facility and there received an evaluation within 45 days prior to the date of the hearing under this Code section, the court shall order that the patient be discharged; or

(B) The patient has not been admitted to either an evaluating or treatment facility and there received an evaluation within 45 days prior to the date of the hearing under this Code section, the court shall order that the patient be admitted to an evaluating facility, and this chapter shall thereafter apply to that patient as though that patient had been ordered by a court to be admitted to that facility pursuant to Code Section 37-7-62; or

(4) That the patient is an inpatient, the court shall order that the patient shall be transported to a treatment facility where the patient shall be admitted for care and treatment, which order may also require that a period of such inpatient treatment be followed by available outpatient treatment if there is such outpatient treatment which will meet the requirements of the patient's individualized service plan and the patient will likely obtain the treatment so as to minimize the likelihood of the patient's becoming an inpatient.

(b) If the court at a hearing under subsection (a) of this Code section concludes that the patient is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, it shall make findings of fact and conclusions of law in support of that conclusion as part of its final order.

(c) The court may order the hospitalization of any patient pursuant to paragraph (4) of subsection (a) of this Code section for any period not to exceed six months, subject to the power of the chief medical officer to discharge the patient under subsection (b) of Code Section 37-7-85. If continued hospitalization is necessary at the end of that period, the chief medical officer shall apply for an order authorizing such continued hospitalization under Code Section 37-7-83.

(d) The court may order the patient to obtain available outpatient treatment under the additional conditions specified in Code Sections 37-7-93 and 37-7-94. (Code 1981, § 37-7-81.1, enacted by Ga. L. 1986, p. 1098, § 9; Ga. L. 1987, p. 3, § 37; Ga. L. 1987, p. 797, § 5; Ga. L. 1991, p. 1059, § 34.)

Code Commission notes. — Pursuant to Code Section 28-9-3, in 1987, the amendment of subparagraph (a)(3)(A) of this Code section by Ga. L. 1987, p. 3, § 27, was treated as impliedly repealed and superseded by Ga. L. 1987, p. 797, § 5, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 1992, a semicolon was substituted for a period at the end of paragraph (a)(2).

JUDICIAL DECISIONS

Cited in Hudgins v. Bawtinhimer, 196 Ga. App. 386, 395 S.E.2d 909 (1990).

37-7-82. Procedure upon failure of or noncompliance with involuntary outpatient treatment plan.

(a) If at any time during a period of involuntary outpatient treatment, including but not limited to interim outpatient treatment arranged pursuant to subsection (b) of Code Section 37-7-91, the physician or psychologist in charge of the patient's outpatient treatment plan determines that, because of a change in the patient's condition, the least restrictive alternative which would accomplish the treatment goals is hospitalization of the patient, then that physician or psychologist may execute a certificate under the conditions specified in subsection (a) of Code Section 37-7-41. That certificate shall have the same duration and effect as a certificate issued pursuant to subsection (a) of Code Section 37-7-41.

(b) If at any time during a period of involuntary outpatient treatment, including but not limited to interim outpatient treatment arranged pursuant to subsection (b) of Code Section 37-7-91, the patient fails without good cause or refuses to comply with the outpatient treatment plan, the physician or psychologist in charge of the outpatient treatment plan or that physician's or psychologist's designee may petition the court originally approving the involuntary treatment of the patient or the court of the county in which the patient is a resident or where the patient may be found for an order authorizing a peace officer to take the patient and immediately deliver the patient to the community mental health center in charge of the patient's outpatient treatment plan, if a physician or psychologist is available there to examine the patient, or to the nearest emergency receiving facility serving the county in which the patient is found. If in the discretion of the court such an order is issued, the patient shall be delivered to the facility and may be given such emergency or other medical treatment as is indicated by good medical practice. The patient must be released from the custody of the community mental health center within four hours and from the custody of the emergency receiving facility within 48 hours after being taken into the custody of that center or facility unless the examining physician or psychologist concludes that, because of a

change in the patient's condition, the least restrictive alternative which would accomplish the treatment goals is hospitalization of the patient. The physician or a psychologist may then execute a certificate under the conditions specified therefor in subsection (a) of Code Section 37-7-41, if the examination is done in a community mental health center, or under the conditions specified therefor in Code Section 37-7-43, if the examination is done in an emergency receiving facility. That certificate shall have the same duration and effect as a certificate issued pursuant to subsection (a) of Code Section 37-7-41 or Code Section 37-7-43, as applicable.

(c) With regard to a patient required to obtain involuntary outpatient treatment, the court may issue any order authorized under subsection (b) of Code Section 37-7-41, but if the court knows that patient is required to obtain involuntary outpatient treatment, that court may issue such order only upon the court's determination, in addition to any other conditions for the issuance of that order, that such patient has not complied with the involuntary outpatient treatment or that the patient reasonably appears to be an inpatient.

(d) Any patient detained in a facility pursuant to this Code section shall not be required during that period of detention to obtain outpatient treatment required by any order which is then in effect and which was issued pursuant to this chapter. That order shall otherwise remain in full force and effect notwithstanding the patient's detention in or release from the facility unless that facility obtains a court order authorized by Code Section 37-7-81.1 which expressly supersedes the prior order. (Code 1933, § 88-406.3, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1981, p. 785, § 1; Ga. L. 1985, p. 1024, § 6; Ga. L. 1986, p. 1098, § 9; Ga. L. 1987, p. 797, § 6; Ga. L. 1991, p. 1059, § 35; Ga. L. 1992, p. 1902, § 21.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "complied" was substituted for "compiled" in subsection (c).

Law reviews. — For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

37-7-83. Procedure for continued involuntary hospitalization.

(a) If it is necessary to continue involuntary treatment of a hospitalized patient beyond the end of the period during which the treatment facility is currently authorized under this chapter to retain the patient, the chief medical officer prior to the expiration of the period, shall seek an order authorizing such continued treatment in the manner provided in this Code section. The chief medical officer may seek such an order authorizing continued involuntary treatment involving inpatient treat-

ment, outpatient treatment, or both under the procedures of this Code section and Code Section 37-7-93.

(b) If the chief medical officer finds that continued involuntary treatment is necessary (1) for an individual who was admitted while serving a criminal sentence but whose sentence is about to expire or (2) for an individual who was hospitalized while under the jurisdiction of a juvenile court but who is about to reach the age of 17, the chief medical officer shall seek an order authorizing such continued treatment in the manner provided in this Code section; and this chapter shall apply fully to such a patient after that time.

(c) A Committee for Continued Involuntary Treatment Review shall be established by the chief medical officer of each hospital and shall consist of not less than five persons of professional status, at least one of whom shall be a physician and at least two others of whom shall be either physicians or psychologists. The committee may conduct its meetings with a quorum of any three members at least one of whom shall be a physician. The function of this committee shall be to review and evaluate the updated individualized treatment plan of each patient of the hospital and to report to the chief medical officer its recommendations concerning the patient's need for continued involuntary treatment. No person who has responsibility for the care and treatment of the individual patient for whom continued involuntary treatment is requested shall serve on any committee which reviews such individual's case.

(d) If the chief medical officer desires to seek an order under this Code section authorizing continued involuntary treatment for up to 12 months beyond the expiration of the currently authorized period of hospitalization, he shall first file a notice of such intended action with the Committee for Continued Involuntary Treatment Review, which notice shall be forwarded to the committee at least 60 days prior to the expiration of that period.

(e) Within ten days of the date of the notice, the committee shall meet to consider the matter of the chief medical officer's intention to seek an order for continued involuntary treatment. Prior to the committee's meeting, the patient and his representatives shall be notified of the following: the purpose of such meeting, the time and place of such meeting, their right to be present at such meeting, and their right to present any alternative individualized treatment plan secured at their expense. In those cases in which the patient will not or cannot appear, at least one member of the committee will make all reasonable efforts to interview the patient and report to the committee. The physician or psychologist proposing the treatment plan shall present an updated individualized treatment plan for the patient to the committee. The committee shall report to the chief medical officer or his designee, other

than the physician or psychologist proposing the treatment plan or a member of the committee, its written recommendations along with any minority recommendations which may also be submitted. Such report will specify whether or not the patient is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment and whether continued hospitalization is the least restrictive alternative available.

(f) If, after considering the committee's recommendations and minority recommendations, if any, the chief medical officer or his designee, other than the attending physician or a member of the committee, determines that the patient is not an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, the patient shall be immediately discharged from involuntary hospitalization pursuant to subsection (b) of Code Section 37-7-85. Such person may apply for voluntary admission pursuant to Code Section 37-7-24.

(g) If after considering the committee's recommendations and minority recommendations, if any, the chief medical officer or his designee, other than the attending physician or member of the committee, determines that the patient is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, he shall, within ten days after receiving the committee's recommendations, serve a petition for an order authorizing continued involuntary treatment along with copies of the updated individualized treatment plan and the committee's report on the designated office within the department and shall also serve such petition along with a copy of the updated individualized treatment plan on the patient. A copy of the petition shall be served on the patient's representatives. The petition shall contain a plain and simple statement that the patient or his representatives may file a request for a hearing with a hearing examiner appointed pursuant to Code Section 37-7-84 within 15 days after service of the petition, that the patient has a right to counsel, that the patient or his representatives may apply immediately to the court to have counsel appointed if the patient cannot afford counsel, and that the court will appoint counsel for the patient unless the patient indicates in writing that he does not desire to be represented by counsel or has made his own arrangements for counsel.

(h) If a hearing is not requested by the patient or the representatives within 15 days of service of the petition on the patient and his representatives, the hearing examiner shall make an independent review of the committee's report, the updated individualized treatment plan, and the petition. If he concludes that continued involuntary treatment may not be necessary or if he finds any member of the committee so concluded, then he shall order that a hearing be held pursuant to subsection (i) of this Code section. If he concludes that

continued involuntary treatment is necessary, then he shall order continued involuntary treatment involving inpatient treatment, outpatient treatment, or both for a period not to exceed one year.

(i) If a hearing is requested within 15 days of service of the petition on the patient and his representatives or if the hearing examiner orders a hearing pursuant to subsection (h) or (j) of this Code section, the hearing examiner shall set a time and place for the hearing to be held within 25 days of the time the hearing examiner receives the request but in any event no later than the day on which the current order of involuntary inpatient treatment expires. Notice of the hearing shall be served on the patient, his representatives, the facility, and, when appropriate, on counsel for the patient. The hearing examiner, within his discretion, may grant a change of venue for the convenience of parties or witnesses. Such hearing shall be a full and fair hearing, except that the patient's attorney, when the patient is unable to attend the hearing and is incapable of consenting to a waiver of his appearance, may move that the patient not be required to appear; however, the record shall reflect the reasons for the hearing examiner's actions. After such hearing, the hearing examiner may issue any order which the court is authorized to issue under Code Section 37-7-81.1 and subject to the limitations of that Code Section 37-7-81.1, provided that a patient who is an outpatient who does not meet the requirements for discharge under paragraph (2) of subsection (a) of Code Section 37-7-81.1 shall nevertheless be discharged and provided that the hearing examiner may order the patient's continued inpatient treatment, outpatient treatment, or both for a period not to exceed one year, subject to the power to discharge the patient under subsection (b) of Code Section 37-7-85 or under Code Section 37-7-94. In the event that an order approving continued hospitalization is entered for an individual who was admitted while serving a criminal sentence under the jurisdiction of the Department of Corrections, but whose sentence is about to expire, the chief medical officer shall serve a copy of that order upon the Department of Corrections within five working days of the issuance of the order.

(j) The hearing examiner for a patient who was admitted under the jurisdiction of the juvenile court and who reaches the age of 17 without having had a full and fair hearing pursuant to any provisions of this chapter or without having waived such hearing shall order that a hearing be held pursuant to subsection (i) of this Code section. (Code 1933, § 88-404.23, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-406.5, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 744, § 10; Ga. L. 1986, p. 1098, § 9; Ga. L. 1991, p. 1059, § 36.)

Cross references. — Criminal penalty for malicious confinement of sane person in asylum, § 16-5-43.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 90, 92, 104.

37-7-84. Appointment of hearing examiners for hearings as to continued hospitalization; powers of hearing examiners generally; issuance of subpoenas.

(a) One or more hearing examiners shall be appointed by the Justices of the Supreme Court to hold the hearings under Code Section 37-7-83. Such hearing examiners shall be members of the State Bar of Georgia and shall be compensated by the department.

(b) The hearing examiners shall have the authority to:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas;

(3) Rule upon offers of proof;

(4) Regulate the course of the hearing;

(5) Provide for the taking of testimony by deposition;

(6) Reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the hearing examiner; and

(7) Make all appropriate orders authorized by this chapter.

(c) If a subpoena issued by the hearing examiner is disobeyed, the hearing examiner may apply to the superior court of the county in which the hearing is held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.

(d) In the event a patient desires counsel in a hearing before the hearing examiner but cannot afford such counsel, the hearing examiner shall apply to the court of the county in which the hearing is held and that court shall appoint counsel for the patient. Payment for such representation shall be made by the county of the patient's legal residence. (Code 1933, § 88-404.22, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-406.4, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 744, § 9; Ga. L. 1986, p. 1098, § 9.)

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 96, 97.

37-7-85. Periodic review of treatment plan; procedure upon termination of need for involuntary treatment; designation of discharge decisionmaker; notice of discharge or transfer to voluntary status.

(a) Each individualized treatment plan for a patient receiving involuntary inpatient treatment shall be reviewed at regular intervals to determine the patient's progress toward the stated goals and objectives of the plan and to determine whether the plan should be modified because of the patient's present condition. These reviews should be based upon relevant progress notes in the patient's clinical record and upon other related information; and input from the patient should be obtained and utilized where feasible.

(b) Any time a patient receiving involuntary inpatient treatment is found by the chief medical officer, after consideration of the recommendations of the treatment team, no longer to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary inpatient treatment, the chief medical officer may:

(1) Discharge the patient from involuntary outpatient or inpatient treatment, or both, subject to the conditions of Code Section 37-7-95;

(2) Discharge the patient from involuntary inpatient treatment and require that the patient obtain available outpatient treatment for the remaining period the patient was to have been required to obtain inpatient treatment, as long as the patient then meets the standards for being discharged to outpatient treatment under paragraph (2) of subsection (a) of Code Section 37-7-81.1 and subject to the conditions of Code Section 37-7-95; or

(3) Transfer the patient to voluntary status at the patient's request, as provided in Code Section 37-7-24.

(c) The chief medical officer may designate in writing another physician, who may be the attending physician, to make these discharge decisions. If the decision of the designee is contrary to the recommendations of the treatment team, the issue must go to the chief medical officer for final determination. Where the treatment team and the designee concur, the decision of the designee will be final.

(d) Notice of the discharge or the transfer of status shall be given to the patient and his representatives; if the patient's hospitalization was authorized by order of a court, to the court which entered such order; and, if the patient was under criminal charges of which the facility

received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient. (Code 1933, § 88-404.24, enacted by Ga. L. 1971, p. 273, § 1; Ga. L. 1977, p. 1293, § 7; Code 1933, § 88-406.6, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1986, p. 1098, § 9; Ga. L. 1991, p. 1059, § 5; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Part 4

Outpatient Treatment

37-7-90. Physician's or psychologist's determination and certification as to involuntary outpatient care; treatment of patient as inpatient or outpatient.

(a) When a physician or psychologist at a facility or on behalf of a facility determines and certifies under this article that there is reason to believe a patient admitted to or examined at the facility is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, that physician or psychologist shall further determine and certify whether there is reason to believe the patient is:

(1) An inpatient or outpatient; and

(2) If an outpatient, whether:

(A) There is available outpatient treatment; and

(B) The patient will likely comply with the outpatient treatment so as to minimize the likelihood of the patient's becoming an inpatient.

(b) Unless otherwise specifically provided, the determination and certification as to paragraphs (1) and (2) of subsection (a) of this Code section shall be made within the time period required for determining whether a patient is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, except that if such determination is made by a physician or psychologist at or on behalf of a community mental health center, the determination and certification shall be made within four hours after the patient is examined by the physician or psychologist.

(c) A person determined and certified to be:

(1) An outpatient;

(2) A person for whom there is available outpatient treatment; and

(3) Likely to comply with the outpatient treatment so as to minimize the likelihood of the patient's becoming an inpatient

shall be considered to be in need of involuntary outpatient treatment and not involuntary inpatient treatment for purposes of further proceedings under this article until such time as that person's status is determined to be otherwise pursuant to those proceedings.

(d) A person determined and certified to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment who does not meet all of the requirements of paragraphs (1), (2), and (3) of subsection (c) of this Code section shall be considered to be in need of involuntary inpatient treatment and not involuntary outpatient treatment for purposes of further proceedings under this article until such time as that person's status is determined to be otherwise pursuant to those proceedings. (Code 1981, § 37-7-90, enacted by Ga. L. 1986, p. 1098, § 10; Ga. L. 1992, p. 1902, § 22.)

Law reviews. — For comment, "1986 Amendments to Georgia's Mental Health Statutes: The Latest Attempt to Provide a Solution to the Problem of the Chronically Mentally Ill," see 36 Emory L.J. 1313 (1987).

JUDICIAL DECISIONS

Compliance with procedures. — Findings in an involuntary treatment proceeding that the patient was incapacitated by alcohol on a recurring basis showed that the patient was unlikely to comply with outpatient treatment and therefore did not meet the outpatient requirements of O.C.G.A. § 37-7-90. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999), reversing Wingate v. Ridgeview Inst., Inc., 233 Ga. App. 649, 504 S.E.2d 714 (1998).

37-7-91. Discharge of persons meeting outpatient care criteria; time; preparation of service plan; interim outpatient treatment; notice of discharge; petition for hearing.

(a) A person who is in the physical custody of a community mental health center, emergency receiving facility, or evaluating facility and who is determined by a physician or a psychologist, at or on behalf of that facility, to meet all of the outpatient treatment requirements of paragraphs (1), (2), and (3) of subsection (c) of Code Section 37-7-90 shall be discharged from that facility as provided in this Code section pending a full and fair hearing or waiver thereof under Code Section 37-7-92. That discharge from a community mental health center shall occur within four hours after the patient is examined by a physician or a psychologist at or on behalf of that center. That discharge from an emergency receiving facility shall occur within 48 hours after the patient's admission thereto. That discharge from an evaluating facility shall occur no later than the expiration of the five-day evaluation period established under Code Section 37-7-64.

(b) Prior to a psychologist's discharging the patient under subsection (a) of this Code section, the treating psychologist shall obtain the concurrence of a physician. In addition, within the time period the facility is authorized to retain the patient, the facility at which or on behalf of which the patient was examined, which facility shall be the "referring facility" for purposes of this part, shall prepare an individualized treatment plan for the patient. This plan shall be prepared in consultation with the facility at which available outpatient treatment is to be provided the patient, which facility shall be the "receiving facility" for purposes of this part. The referring facility shall also make arrangements with the receiving facility to provide interim outpatient treatment, in accordance with the individualized treatment plan, to the patient pending the full and fair hearing or waiver thereof. Nothing in this Code section shall prevent a referring facility for a patient from also being the receiving facility for that patient.

(c) A patient for whom interim outpatient treatment is arranged pursuant to subsection (b) of this Code section shall obtain that treatment or be subject to the provisions of Code Section 37-7-82. Written notice of the time, date, place, and address for that interim outpatient treatment shall be provided the patient prior to the patient's discharge, along with written notification that if the patient does not comply with the interim outpatient treatment or attend or waive a hearing, the time and date of which hearing will later be provided the patient, the patient may be involuntarily admitted for examination, treatment, or both. Notice of the discharge shall be provided to persons other than the patient in the same manner and under the same conditions as required by subsection (c) of Code Section 37-7-43 and subsection (d) of Code Section 37-7-64, and that notice shall also include a notice regarding the interim outpatient treatment and the consequences if the patient does not obtain the treatment or attend or waive the hearing.

(d) Within three days after a referring facility has discharged a patient pursuant to subsection (a) of this Code section, that facility shall transmit to the receiving facility a copy of the referring facility's examination report, individualized treatment plan, and such other necessary clinical information the referring facility may have regarding the patient. Within five days after receiving such report, plan, and information, the receiving facility shall petition the court of the county in which the patient is located for a full and fair hearing pursuant to Code Section 37-7-92 and include with the petition a copy of the examination report, the individualized treatment plan, and the address to which the patient was discharged by the referring facility.

(e) Notwithstanding the provisions of subsection (a) of this Code section, a patient detained in a treatment facility pursuant to a

certificate and petition under Code Section 37-7-81, whether or not that patient is subsequently determined by that facility during the time of such detention to meet all of the outpatient treatment requirements of paragraphs (1), (2), and (3) of subsection (c) of Code Section 37-7-90, may not be discharged from that facility until a full and fair hearing is held pursuant to Code Section 37-7-81.1, which hearing may not be waived by any patient so determined to meet all of such outpatient treatment requirements. (Code 1981, § 37-7-91, enacted by Ga. L. 1986, p. 1098, § 10; Ga. L. 1987, p. 797, §§ 7, 8; Ga. L. 1989, p. 14, § 37; Ga. L. 1992, p. 1902, § 23.)

37-7-92. Hearing; notice; waiver of hearing; apprehension and detention of patient failing to appear; treatment upon waiver.

(a) Except when a hearing is waived as provided in this subsection, within 30 days after the filing of the petition under subsection (d) of Code Section 37-7-91, the court shall hold a full and fair hearing. At least ten days prior to that hearing, the court shall have served on the patient and the patient's representatives the same notices and information required by paragraphs (1) through (4) of subsection (a) of Code Section 37-7-81, as well as a notice that the patient may waive in writing the hearing but if the patient does not either attend or waive the hearing the court may order the patient to be taken into custody, hospitalized, evaluated, and treated. The patient and representatives shall have the rights specified in those notices. Hearings held pursuant to this subsection shall be held as provided in Code Section 37-7-81.1, and the court holding the hearing may issue any order authorized by and subject to the limitations of that Code Section 37-7-81.1.

(b) If the patient is notified of the hearing as required under subsection (a) of this Code section and does not appear at or waive that hearing, absent a showing of good cause for not appearing, the court may issue an order commanding any peace officer to take such person into custody and deliver that person to an emergency receiving facility or the referring facility if there is a physician or psychologist available there, and this chapter shall thereafter apply to that patient as though the patient had been admitted to that facility pursuant to subsection (b) of Code Section 37-7-41.

(c) If the hearing is waived as provided in subsection (a) of this Code section, that hearing shall not be held but the court shall order the patient to obtain available outpatient treatment under the individualized treatment plan submitted with the petition for hearing. (Code 1981, § 37-7-92, enacted by Ga. L. 1986, p. 1098, § 10; Ga. L. 1992, p. 1902, § 24.)

37-7-93. Court order for outpatient treatment; physician's or psychologist's petition to extend order; review of petition; hearing on extension petition; patients under juvenile court jurisdiction.

(a) Pursuant to Code Section 37-7-81.1 or Code Section 37-7-92, the court may order the patient to obtain available outpatient treatment for any period not to exceed one year, but the total period of involuntary treatment required by such order, including inpatient treatment within the limitations of Code Section 37-7-81.1, shall not exceed one year.

(b) If it is necessary to continue available outpatient treatment beyond the period authorized pursuant to subsection (a) of this Code section, at least 60 days prior to the expiration of that period the physician or psychologist responsible for that treatment or the person responsible for the patient's treatment under the direction and with approval of the physician or psychologist shall:

(1) Update the patient's individualized treatment plan;

(2) Prepare a report containing evidence that the patient meets all the requirements for available outpatient treatment under paragraphs (1), (2), and (3) of subsection (c) of Code Section 37-7-90; and

(3) Petition the hearing examiners appointed to hold hearings under Code Section 37-7-83 for an order requiring the patient to obtain available outpatient treatment beyond the period previously ordered for the patient.

The petition shall contain a plain and simple statement that the patient or the patient's representatives may file a request for a hearing with a hearing examiner appointed to hold hearings pursuant to Code Section 37-7-83 within 15 days after service of the petition, that the patient has a right to counsel at the hearing, that the patient or the patient's representatives may apply immediately to the court to have counsel appointed if the patient cannot afford counsel, and that the court will appoint counsel for the patient unless the patient indicates in writing that the patient does not desire to be represented by counsel or has made the patient's own arrangements for counsel.

(c) If a hearing is not requested by the patient or the representatives within 15 days of service of the petition on the patient and the patient's representatives, the hearing examiner shall make an independent review of the report, the updated individualized treatment plan, and the petition. If the hearing examiner concludes from that review that the patient is no longer an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, then that hearing examiner shall order that a hearing be held pursuant to subsection (d) of this Code section. If the hearing examiner concludes that the patient meets

all the requirements for available outpatient treatment under paragraphs (1), (2), and (3) of subsection (c) of Code Section 37-7-90, then the hearing examiner shall order continued outpatient treatment for a period not to exceed one year.

(d) If the hearing examiner orders a hearing pursuant to subsection (c) or (e) of this Code section or if a hearing is requested within 15 days of service of the petition on the patient and the patient's representatives, the hearing examiner shall set a time and place for the hearing to be held within 25 days of the time the hearing examiner receives the request but in any event no later than the day on which the current order of involuntary outpatient treatment expires. Notice of the hearing shall be served on the patient, the patient's representatives, the facility providing outpatient treatment for the patient, and, when appropriate, on counsel for the patient. The hearing examiner, within that person's discretion, may grant a change of venue for the convenience of parties or witnesses. Such hearing shall be a full and fair hearing. After such hearing, the hearing examiner may issue any order which the court is authorized to issue under paragraphs (1), (2), and (3) of subsection (a) of Code Section 37-7-81.1 and subject to the limitations of that Code section. If the patient does not appear at the hearing, absent a showing of good cause, the hearing examiner may issue any order the court is authorized to issue under subsection (b) of Code Section 37-7-92.

(e) The hearing examiner for a patient who is ordered to obtain available outpatient treatment, who is under the jurisdiction of the juvenile court, and who reaches the age of 17 without having had a full and fair hearing pursuant to any provisions of this article or without having waived such hearing shall order that a hearing be held pursuant to subsection (d) of this Code section. (Code 1981, § 37-7-93, enacted by Ga. L. 1986, p. 1098, § 10; Ga. L. 1991, p. 1059, § 37; Ga. L. 1992, p. 1902, § 25.)

Code Commission notes. — Pursuant to § 28-9-5, in 1991, the comma was deleted following "treatment" the second time it appears in subsection (b).

37-7-94. Reviews of individual service plans; discharge of patients from treatment; notice of discharge.

(a) Each individualized treatment plan for available outpatient treatment shall be reviewed at regular intervals to determine the patient's progress toward the stated goals and objectives of the plan and to determine whether the plan should be modified because of the patient's present condition. These reviews should be based upon relevant progress notes in the patient's clinical record and upon other related information; and input from the patient should be obtained and utilized where feasible.

(b) Any time a patient is found by the physician or psychologist in charge of the patient's outpatient treatment no longer to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment, that physician or psychologist shall discharge the patient from further compliance with the treatment.

(c) Notice of the discharge under subsection (b) of this Code section shall be given to the patient and his representatives; to the court which originally ordered such involuntary treatment; and, if the patient was under criminal charges of which the facility received written notification, by certified mail or statutory overnight delivery to the law enforcement agency originally having custody of the patient. (Code 1981, § 37-7-94, enacted by Ga. L. 1986, p. 1098, § 10; Ga. L. 1991, p. 1059, § 38; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

37-7-95. Discharge of patients under criminal charges.

Notwithstanding any other provisions of any part of this article, a patient under criminal charges, notice of which has been given in writing to the facility, may only be discharged from the physical custody of a facility if the facility, by certified mail or statutory overnight delivery, provides written notification of the proposed discharge to the law enforcement agency originally having custody of the patient and the patient is discharged into the physical custody of a peace officer from that agency. That agency shall be required to assume such physical custody within five days after receipt in writing of the notification of proposed discharge. (Code 1981, § 37-7-95, enacted by Ga. L. 1986, p. 1098, § 10; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

ARTICLE 4

PLACEMENT, TRANSFER, AND TRANSPORTATION OF PATIENTS GENERALLY

37-7-100. Placement and transfer of patients generally.

(a) The department may designate the state owned or state operated facility to which a patient is to be admitted under this chapter. The department may instead designate a private facility, approved under Code Section 37-7-7, to which the patient is to be admitted, if the

department has obtained the prior agreement of the private facility and of the patient or his representatives.

(b) A patient hospitalized in a state owned or state operated facility under this chapter may apply for transfer at his own expense to a private facility approved under Code Section 37-7-7 if he is able to pay for treatment at such private facility. If the private facility agrees to accept the patient, the department shall transfer the patient to that facility.

(c) If a private facility requests the department to take custody of a patient who has been hospitalized therein under this chapter and if the patient meets the criteria for admission under this chapter, then the department shall accept the patient and designate the state owned or state operated facility to which the patient shall be admitted.

(d) When the needs of the patient or efficient utilization of any facility so requires, a patient may be transferred from one facility to another. At the time of any such transfer, notice shall be given in writing to the patient and to his representatives and the patient shall be advised in writing of the reasons for his transfer. A voluntary patient may be transferred only with his consent.

(e) A patient hospitalized in a private facility, approved under Code Section 37-7-7, or that patient's representative may request that facility to transfer the patient to a state owned or operated facility. That private facility shall then request the department to take custody of the patient. If the patient meets the criteria for admission under this chapter, then the private facility shall transfer the patient and the department shall accept the patient and designate the state owned or state operated facility to which the patient shall be admitted. (Code 1933, § 88-406.4, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-402.16, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1985, p. 873, § 2.)

37-7-101. Transportation of patients generally.

(a) The governing authority of the county where the patient is found or located shall arrange for initial emergency transport of the patient to an emergency receiving facility. Except as otherwise authorized under subsection (b) of this Code section, the governing authority of the county of the patient's residence shall arrange for all required transportation for mental health purposes subsequent to the initial transport. The type of vehicle employed shall be in the discretion of the governing authority of the county, provided that, whenever possible, marked vehicles normally used for the transportation of criminals or those accused of crimes shall not be used for the transportation of patients. The court shall, upon the request of the community mental

health center, order the sheriff to transport the patient in such manner as the patient's condition demands. At any time the community mental health center is satisfied that the patient can be transported safely by family members or friends, such private transportation shall be encouraged and authorized. In nonemergency situations, no female patient shall be transported at any time without another female in attendance who is not a patient, unless such female patient is accompanied by her husband, father, adult brother, or adult son.

(b) Notwithstanding the provisions of subsection (a) of this Code section, when a patient is under the care of a facility, the facility shall have the discretion to determine the type of vehicle to safely transport the patient and to arrange for such transportation without the need to obtain the prior approval of the governing authority of the county of the patient's residence, the court, or the community mental health center. This subsection shall not prevent the facility from requesting and receiving transportation services from the governing authority of the county of the patient's residence and shall not relieve the county sheriff of the duty of providing transportation. Persons providing transportation are authorized to transport a patient from a sending facility to a receiving facility but shall not release the patient under any circumstances except into the custody of the receiving facility. The use of physical restraints to ensure the safe transport of the patient shall comply with Code Section 37-7-165. When transportation is not provided by the county sheriff, the expense of such transportation shall not be billed to the county governing authority but may be billed to the patient and, unless agreed to in writing by the facility, shall not be billed to or considered an obligation of the facility. (Code 1933, § 88-402.17, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1993, p. 1445, § 17.9; Ga. L. 2002, p. 1067, § 3.)

Cross references. — Manner of marking of law enforcement and emergency vehicles, § 40-8-90 et seq.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 1993, p. 1445, § 19, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1994; provided, however, that provisions relating to the establishment of regional and community service board boundaries and the appointments of regional boards and community service boards shall become effective on July 1, 1993, or upon whatever date is stipulated in the Act and provided, further, that the provisions authorizing a county board of health to agree to serve as the lead county board of health for only that county shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." The Act was approved by the Governor on April 27, 1993.

Ga. L. 1993, p. 1445, which amends this Code section, provides, in § 19.1, not codified by the General Assembly, that the amendment is repealed on June 30, 1999; however, Ga. L. 1998, p. 870, § 1, struck § 19.1 of Ga. L. 1993, p. 1445, which would have repealed the 1993 amendment to this Code section.

JUDICIAL DECISIONS

Cited in Kendrick v. Metropolitan Psychiatric Ctr., Inc., 158 Ga. App. 839, 282 S.E.2d 361 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Responsibility for transportation of alcoholics policy. — Responsibility for setting policy for transportation of alcoholics to a state hospital falls on the county governing body and the county health department; any recommendation by the grand jury on this subject would not be binding on any individual. 1973 Op. Att'y Gen. No. U73-109.

37-7-102. Transfer to custody of federal agencies for diagnosis, care, or treatment; retention of jurisdiction by State courts; jurisdiction over patients in federal hospitals and institutions located in Georgia.

(a) If a patient ordered to be hospitalized pursuant to this chapter is eligible for hospital care or treatment by the United States Department of Veterans Affairs or any other federal agency, the department, upon receipt of a certificate from such hospital showing that facilities are available and that the patient is eligible for diagnosis, care, or treatment therein, may transfer him to the custody of such agency for hospitalization. When any such patient is admitted under this Code section to any such hospital or institution within or without the state, he shall be subject to the rules and regulations of such agency. The superintendent and chief medical officer of any hospital or institution operated by such agency in which the individual is so hospitalized shall, with respect to such individual, be vested with the same powers and duties as the superintendent and chief medical officer of facilities within this state with respect to all matters under this chapter. Jurisdiction is retained in the appropriate courts of this state at any time to inquire into the mental condition of an individual so hospitalized to determine the necessity for continuance of his hospitalization and to order his release; and every transfer of a patient by the department pursuant to this Code section is so conditioned.

(b) An order of a court of competent jurisdiction of another state, territory, or possession or of the District of Columbia authorizing hospitalization of a patient by any agency of the United States shall have the same force and effect as to the patient while in this state as in the jurisdiction in which is situated the court entering the order; and the courts of the state, territory, possession, or district issuing such order shall be deemed to have retained jurisdiction of the patient so hospitalized for the purpose of inquiring into his mental condition and determining the necessity for continuance of his hospitalization, as is

provided in subsection (a) of this Code section with respect to patients ordered hospitalized by the courts of this state. Consent is given for the application of the law of the state, territory, possession, or district in which is located the court issuing the order for hospitalization with respect to the authority of the chief medical officer of any hospital or institution operated in this state by the United States Department of Veterans Affairs or any other federal agency to retain custody, transfer, furlough, or discharge the patient therein hospitalized. (Code 1933, § 88-407.4, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1990, p. 45, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 90, 93. 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 66.

37-7-103. Procedure for transfer of Georgia residents from out-of-state hospitals to Georgia hospitals.

Upon application to the department by a parent, spouse, next of kin, or guardian or by an agency of another state in which the patient is hospitalized, a patient shall be eligible to be hospitalized in the State of Georgia if found by the department to be a legal resident of this state. The department shall designate a hospital to which such patient is to be transported at no expense to the State of Georgia. The regional state hospital administrator of such hospital and the next of kin or guardian of the patient shall be notified of this action. The chief medical officer shall be authorized to hospitalize the patient for a period not to exceed five days unless prior to the expiration of such period the patient shall have voluntarily agreed to hospitalization or involuntary proceedings shall have been instituted under this chapter. After a thorough physical and mental examination has been made by the medical staff of such hospital, the chief medical officer of the hospital or his designee is authorized to sign an application for involuntary hospitalization if necessary. Such application shall be forwarded to the court of the county in which that hospital is located for action pursuant to the provisions of this chapter relative thereto. (Code 1933, § 88-407.8, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 2002, p. 1324, § 1-18.)

37-7-104. Procedure upon discovery that a patient hospitalized in Georgia is not a resident.

If a hospitalized patient is discovered not to be a resident, the regional state hospital administrator of the treatment facility in which the patient is hospitalized shall seek his transfer to the custody of authorities of the state of his residence or to a publicly owned or publicly operated psychiatric hospital in that state. Notwithstanding

an individual's status as a nonresident, nothing contained in this Code section shall prevent the voluntary hospitalization of such individual under this chapter for which due payment is made by such individual or others on his behalf nor shall it prevent the transfer, custody, care, or treatment of such individual in accordance with the terms of any reciprocal agreement between the State of Georgia and any other state, the District of Columbia, or any territory or possession of the United States. This Code section shall not apply to persons confined to any facility operated by or under the control of the United States Department of Veterans Affairs or any other federal agency. (Code 1933, § 88-407.3, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 2002, p. 1324, § 1-18.)

Cross references. — Rights of citizens of other states while in Georgia generally, § 1-2-9.

ARTICLE 5

PAYMENT OF EXPENSES OF PATIENT CARE AND TRANSPORTATION GENERALLY

37-7-120. Effect of inability to pay on right to care and treatment.

It is the policy of this state that no person shall be denied care and treatment for alcoholism, drug dependency, or drug abuse nor shall services be delayed at a facility of the state or a political subdivision of the state because of inability to pay for such care and treatment. (Code 1933, § 88-402.3, enacted by Ga. L. 1978, p. 1856, § 1.)

Cross references. — Payment of patient expenses for support and treatment in state institutions generally, T. 37, C. 9.

RESEARCH REFERENCES

ALR. — Alcoholic as entitled to public assistance under poor laws, 43 ALR3d 554.

37-7-121. Liability for expenses of transporting, examining, and caring for patients.

(a) The responsibility for paying the expenses for transporting, examining, and caring for patients, which expenses are not provided for under Chapter 9 of this title, relating to the payment of costs of care of persons admitted to state institutions under the department, shall be in the following order:

(1) The patient or his estate;

(2) Persons legally obligated or legally responsible for the support of the patient;

(3) The county of the patient's legal residence, provided that the county governing authority passes an appropriate resolution assuming such responsibility; and

(4) The department, when the General Assembly appropriates funds for such purpose.

(b) The patient or those legally obligated for his support shall not be responsible for such expenses as described above where they were incurred in transporting a patient who is released by a court or a facility before involuntary treatment as not being an alcoholic, a drug dependent individual, or a drug abuser in need of involuntary treatment.

(c) The board is authorized to issue rules and regulations governing the provisions of this Code section as it relates to the department. (Code 1933, § 88-407.7, enacted by Ga. L. 1978, p. 1856, § 1.)

Cross references. — Payment of costs of hospital care for the indigent, § 31-8-1 et seq. Medical assistance generally, § 49-4-140 et seq.

37-7-122. Payment of expenses incurred in connection with hearings held under this chapter.

(a) Except as provided in this Code section, the expenses of any hearing held under this chapter by a court or by a hearing examiner, including attorneys' fees authorized by paragraph (1) of subsection (b) of this Code section and including hearing officer expenses authorized by paragraph (3) of subsection (b) of this Code section, shall be paid by the county in which the patient has his residence or, if the patient is a transient, by the county in which the patient was initially taken into the custody of the state. Payment by such county of the hearing expenses shall only be required if the person who actually presides over the hearing executes an affidavit or includes a statement in his final order relating to the hearing that the assets of the patient, his estate, and any persons legally obligated to support the patient appear to be insufficient to defray such expenses, based upon all relevant information available to the person who actually presides over the hearing. Such affidavit or statement may include the patient's name, address, and age. The cost on appeal to the appropriate court shall be the same as provided for in other appeals from the probate and juvenile courts.

(b) Expenses of any hearing held under this chapter shall include:

(1) The fee to be paid to an attorney appointed under this chapter to represent a patient at such hearing. Such fee shall be as agreed

between the attorney and the appointing court but shall not exceed an amount determined under the fee schedule followed by the county when computing the fees to be paid to an attorney who has been appointed to represent an indigent criminal defendant plus actual expenses which an attorney may incur and which have been approved by the court holding the hearing. In exceptional circumstances, the attorney may apply to the superior court of the judicial circuit in which the hearing was held for an order granting reasonable fees in excess of the amounts specified in this paragraph;

(2) The fee to be paid to the court, which fee shall be to defray the cost of clerical help and the cost of any additional office space and equipment required for the conduct of such hearing. In hearings conducted pursuant to Code Section 37-7-83 such fee shall be $20.00 and in all other hearings under this chapter such fee shall be $40.00, excluding attorneys' fees and expenses of the hearing officer; and

(3) The fee to be paid to a hearing officer appointed pursuant to subparagraph (A) of paragraph (7) of Code Section 37-7-1 to conduct a hearing. Such fee shall be as agreed between the hearing officer and the appointing court, but shall not exceed an amount determined under the fee schedule followed by the county when computing the fees to be paid to an attorney who has been appointed to represent an indigent criminal defendant plus actual expenses which the hearing officer may incur and which have been approved by the court holding the hearing. In exceptional circumstances, the hearing officer may apply to the superior court of the judicial circuit in which the hearing was held for an order granting reasonable fees in excess of the amounts specified in this paragraph. The $40.00 court cost authorized by paragraph (2) of this subsection shall also be authorized to defray the cost of clerical help and additional office space and equipment required for the conduct of such hearing. (Code 1933, § 88-407.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 1042, § 1; Ga. L. 1985, p. 875, § 3.)

ARTICLE 6

RIGHTS AND PRIVILEGES OF PATIENTS, THEIR REPRESENTATIVES, AND OTHERS GENERALLY

Part 1

General Provisions

37-7-140. Retention of rights and privileges by patients generally; right to due process.

Patients shall retain all rights and privileges granted other persons or citizens. Notwithstanding any other provision of law to the contrary,

no person who is receiving or has received services for alcoholism or drug abuse shall be deprived of any civil, political, personal, or property rights or be considered legally incompetent for any purpose without due process of law. (Code 1933, § 88-411, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-406.5, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-402.1, enacted by Ga. L. 1978, p. 1856, § 1.)

Cross references. — Rights of persons generally, T. 1, C. 2. Habitual intoxication or habitual drug addiction as grounds for divorce, § 19-5-3.

37-7-141. Patients' right to legal counsel.

It shall be the responsibility of the department to see that every patient is given the opportunity to secure legal counsel at his own expense to represent him in connection with private, personal, domestic, business, civil, criminal, and all other legal matters in which he may be involved during hospitalization. (Code 1933, § 88-402.15, enacted by Ga. L. 1978, p. 1856, § 1.)

Cross references. — Right to legal counsel generally, U.S. Const., amend. 6 and Ga. Const., 1983, Art. I, Sec. I, Para. XIV.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, §§ 90, 96, 97.

ALR. — Accused's right to represent himself in state criminal proceedings — modern state cases, 98 ALR3d 13.

37-7-142. Right of patients to communicate with persons outside facility and to receive visitors; inspection, restriction, and censorship of patient correspondence; establishment by chief medical officer of regulations governing visits and use of telephones.

(a) Each patient in a facility shall have the right to communicate freely and privately with persons outside the facility and to receive visitors inside the facility.

(b) Except as otherwise provided in this Code section, each patient shall be allowed to receive and send sealed, unopened mail; and no patient's incoming or outgoing mail shall be opened, delayed, held, or censored by the facility.

(c) If there are reasonable grounds to believe that incoming mail contains items or substances which may be dangerous to the patient or others, the chief medical officer may direct reasonable examination of such mail and, after examination, may regulate the disposition of such items or substances found therein. All writings must be presented to the patient within 24 hours of inspection.

(d) The chief medical officer may apply to the court for a temporary order to restrict outgoing mail. If the court determines that probable cause exists that such mail is dangerous to the patient or others, the court may order such mail temporarily restricted, provided that a full and fair hearing shall be held within five days after the issuance of such temporary order to determine whether or not an order of restriction for an extended time shall issue. In no event shall mail be restricted pursuant to such temporary order for more than five days after the date of the temporary order. A full and fair hearing shall be held after the issuance of the temporary order. If, at such hearing, the patient's outgoing mail is determined to be dangerous to the patient or others, the court may order such mail restricted for an extended period not to exceed 30 days. Restrictions for extended periods may be renewed for additional periods not to exceed 30 days each, provided that no such restriction shall be renewed except upon a renewed finding at another full and fair hearing for each such renewal that such mail is dangerous to the patient or others.

(e) If an injunction against the sending of mail by a patient is issued by a court, the chief medical officer shall restrict outgoing mail as provided by the order of the court.

(f) No restriction of either incoming or outgoing mail under subsection (c) or (d) of this Code section shall exceed a period of five days, notwithstanding the authority to restrict such mail for longer periods, provided that such restrictions may be continued as necessary for periods not to exceed five days each upon determination by the chief medical officer, prior to each continuation, that such mail continues to be dangerous to the patient or others; provided, further, that in the case of outgoing mail, such continuation periods in the aggregate shall not exceed the restriction period authorized in the court order.

(g) Correspondence of the patient with his attorney shall not be restricted in any manner under this Code section. Correspondence of the patient with public officials shall not be restricted in any manner under subsection (c) of this Code section.

(h) Each time a patient's incoming mail is ordered examined by the chief medical officer and each time a patient's outgoing mail is ordered examined by a temporary court order, written notice of such order and notice of a right to a full and fair hearing within five days after such temporary court order shall be served on the patient and his representatives as provided in Code Section 37-7-147. A voluntary patient may waive in writing such notice to his representatives.

(i) The circumstances surrounding the examination of any mail under subsection (c), (d), (e), or (f) of this Code section shall be recorded on the patient's clinical record.

(j) The chief medical officer is authorized to establish reasonable regulations governing visitors, visiting hours, and the use of telephones by patients. (Code 1933, § 88-402.7, enacted by Ga. L. 1978, p. 1856, § 1.)

37-7-143. Patients' rights in regard to personal effects; liability of facility's employees and staff members for loss of or damage to patients' personal effects.

A patient's rights to his personal effects shall be respected. The chief medical officer may take temporary custody of such effects when required for medical reasons. The facility shall make reasonable efforts to assure the safety of the patient's belongings, but no employee or staff member shall be responsible for loss of or damage to such property where reasonable safety precautions have been taken. (Code 1933, § 88-402.8, enacted by Ga. L. 1978, p. 1856, § 1.)

37-7-144. Patients' right to vote.

Each patient in a facility who is eligible to vote shall be given his right to vote in primary, special, and general elections and in referendums. The superintendent or regional state hospital administrator of each facility shall permit and reasonably assist patients:

(1) To obtain voter registration forms, applications for absentee ballots, and absentee ballots;

(2) To comply with other requirements which are prerequisite for voting; and

(3) To vote by absentee ballot if necessary. (Code 1933, § 88-402.9, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1995, p. 10, § 37; Ga. L. 2002, p. 1324, § 1-19.)

Cross references. — Right to elective franchise generally, U.S. Const., amend. 15; Ga. Const., 1983, Art. II, Sec. I, Para. II; and § 1-2-6. Absentee voting, § 21-2-380 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Elections, § 233 et seq.

C.J.S. — 29 C.J.S., Elections, § 330 et seq.

37-7-145. Employment of patients outside facilities.

If a patient wishes to be employed outside a facility and if such employment will aid in the patient's treatment, he shall be assisted in his efforts to secure suitable employment and all benefits flowing from such employment. The department shall encourage such employment of

patients and shall promote the training of patients for gainful employment after discharge. All benefits of such employment shall accrue solely to the patient. (Code 1933, § 88-402.10, enacted by Ga. L. 1978, p. 1856, § 1.)

37-7-146. Education of children undergoing treatment in a facility.

The rights of any child under treatment in a facility to an appropriate education at public expense shall not be abridged during hospitalization; and the special educational needs of each child shall be individually considered and respected. The Department of Behavioral Health and Developmental Disabilities and the State Department of Education shall ensure that education is provided for all patients of school age who are hospitalized in any state owned, state operated, or any other designated facility. (Code 1933, § 88-402.11, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 2009, p. 453, § 3-2/HB 228.)

37-7-147. Appointment of patient representatives and guardians ad litem; notice provisions; duration and scope of guardianship ad litem.

(a) At the time a patient is admitted to any facility under this chapter, that facility shall use diligent efforts to secure the names and addresses of at least two representatives, which names and addresses shall be entered in the patient's clinical record.

(b) The patient may designate one representative; the second representative or, in the absence of designation of one representative by the patient, both representatives shall be selected by the facility. If the facility is to select both representatives, it must make one selection from among the following persons in the order of listing: the patient's legal guardian, spouse, adult child, parent, attorney, adult next of kin, or adult friend, provided that, in the case of a patient whose representative or representatives have been appointed by the court under Code Section 37-7-62, the facility shall not select a different representative. The second representative shall also be selected from the above list but without regard to the order of listing, provided that the second representative shall not be the person who filed the petition to have the patient admitted to the facility.

(c) If the facility is unable to secure at least two representatives after diligent search or if the department is the guardian of the patient, that fact shall be entered in the patient's clinical record and the facility shall apply to the court in the county of the patient's residence for the appointment of a guardian ad litem, which guardian ad litem shall not be the department. On application of any person or on its own motion,

the court may also appoint a guardian ad litem for a patient for whom two representatives have been named whenever the appointment of a guardian ad litem is deemed necessary for protection of the patient's rights. Such guardian ad litem shall also act as representative of the patient and shall have the powers granted to representatives by this chapter.

(d) At any time notice is required by this chapter to be given to the patient's representatives, such notice shall be served on the representatives designated under this Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless otherwise provided, notice may be served in person or by first class mail. When notice is served by mail, a record shall be made of the date of mailing and shall be placed in the patient's clinical record. Service shall be completed upon mailing.

(e) At any time notice is required by this chapter to be given to the patient, the date on which notice is given shall be entered on the patient's clinical record. If the patient is unable to comprehend the written notice, a reasonable effort shall be made to explain the notice to him.

(f) At the time a court enters an order pursuant to this chapter, such order and notice of the date of entry of the order shall be served on the patient and his representatives as provided in subsection (d) of this Code section.

(g) Notice of an involuntary patient's admission to a facility shall be given to his representatives in writing. If such involuntary admission is to an emergency receiving facility, notice shall also be given by that facility to the patient's representatives by telephone or in person as soon as possible.

(h) In every instance in which a court shall appoint a guardian ad litem for any person pursuant to the terms of this chapter, such guardianship shall be for the limited purpose stated in the order of the court and shall expire automatically after 90 days or after a lesser time stated in the order. The responsibility of the guardian ad litem shall not extend beyond the specific purpose of the appointment. (Code 1933, § 88-402.18, enacted by Ga. L. 1978, p. 1856, § 1.)

Cross references. — Guardians of incapacitated adults, T. 29, C. 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 96.

37-7-148. Rights of patients or representatives to petition for writ of habeas corpus and for judicial protection of rights and privileges granted by this chapter.

(a) At any time and without notice, a person detained by a facility or a relative or friend on behalf of such person may petition, as provided by law, for a writ of habeas corpus to question the cause and legality of detention and to request any court of competent jurisdiction on its own initiative to issue a writ for release, provided that, in the case of any such petition for the release of a person detained in a facility pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the petition along with proper certificate of service shall also be served upon the presiding judge of the court ordering such detention and the prosecuting attorney for such court, which service may be made by certified mail or statutory overnight delivery, return receipt requested.

(b) A patient or his representatives may file a petition in the appropriate court alleging that the patient is being unjustly denied a right or privilege granted by this chapter or that a procedure authorized by this chapter is being abused. Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue appropriate orders to correct any abuse under this chapter. (Code 1933, § 88-406.2, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-402.14, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1980, p. 678, § 1; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Habeas corpus generally, T. 9, C. 14. Penalty for malicious confinement of sane person in asylum, § 16-5-43.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

37-7-149. Establishment of patients and staff complaint procedures; making of final decisions; complaint procedures as alternative to legal remedies.

Each facility shall establish procedures whereby complaints of the patient or complaints of the staff concerning treatment of the patient can be speedily heard, with final decisions to be made by the superintendent, the regional state hospital administrator, or an advisory committee, whichever is appropriate. The board shall establish reasonable rules and regulations for the implementation of such procedures. However, the patient shall not be required to utilize these procedures in lieu of other available legal remedies. (Code 1933, § 88-402.22, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 2002, p. 1324, § 1-16.)

Cross references. — Reports and investigations regarding mistreatment of hospital patients, residents of long-term care facilities, and other institutions,

§§ 31-7-9, 31-8-50 et seq., 31-8-80 et seq., 31-8-100 et seq.

37-7-150. Right to appeal orders of probate court, juvenile court, or hearing examiner; payment of costs of appeal; right of patient to subsequent appeal; right of patient to legal counsel on appeal.

The patient, the patient's representatives, or the patient's attorney may appeal any order of the probate court or hearing officer rendered in a proceeding under this chapter to the superior court of the county in which the proceeding was held, except as otherwise provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile court rendered in a proceeding under this chapter to the Court of Appeals and the Supreme Court. The appeal to the superior court shall be made in the same manner as appeals from the probate court to the superior court, except that the appeal shall be heard before the court sitting without a jury as soon as practicable but not later than 30 days following the date on which the appeal is filed with the clerk of the superior court. The appeal from the order of the juvenile court to the Court of Appeals and the Supreme Court shall be as provided by law but shall be heard as expeditiously as possible. The patient must pay all costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The patient shall retain all rights of review of any order of the superior court, the Court of Appeals, and the Supreme Court, as provided by law. The patient shall have a right to counsel or, if unable to afford counsel, shall have counsel appointed for the patient by the court. The appeal rights provided to the patient, the patient's representatives, or the patient's attorney in this Code section are in addition to any other appeal rights which the parties may have, and the provision of the right for the patient, the patient's representatives, or the patient's attorney to appeal does not deny the right to the Department of Behavioral Health and Developmental Disabilities to appeal under the general appeal provisions of Code Sections 5-3-2 and 5-3-3. (Code 1933, § 88-402.19, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1986, p. 982, § 13; Ga. L. 1994, p. 1072, § 5; Ga. L. 1995, p. 10, § 37; Ga. L. 2009, p. 453, § 3-2/HB 228.)

Editor's notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

OPINIONS OF THE ATTORNEY GENERAL

Effect of 1986 amendment. — Georgia Law 1986, p. 982, which affects procedures in probate courts in certain counties, does not affect mental health cases heard by probate courts under O.C.G.A. §§ 37-3-150, 37-4-110, and 37-7-150. 1986 Op. Att'y Gen. No. U86-18.

Part 2

Rights and Privileges as to Manner of Care and Treatment and as to Maintenance and Release of Clinical Records

Cross references. — Production of medical records for judicial proceedings generally, § 24-10-70 et seq.

37-7-160. Individual dignity of patients to be respected; treatment of alcoholics and drug abusers as medical patients; use of criminal facilities and procedures.

The patient's dignity as an individual shall be respected at all times and upon all occasions, including any occasion wherein the patient is taken into custody, detained, or transported. Alcoholics, drug dependent individuals, or drug abusers or those suspected of being alcoholics, drug dependent individuals, or drug abusers shall, to the maximum extent reasonably possible, be treated at all times as medical patients. All patients shall be treated by a physician or psychologist acting within the scope of his or her license. Except where required under conditions of extreme urgency, those procedures, facilities, vehicles, and restraining devices normally utilized for criminals or those accused of crime shall not be used in connection with the alcoholics, drug dependent individuals, or drug abusers. (Code 1933, § 88-402.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1992, p. 1902, § 26.)

37-7-161. Securing of least restrictive alternative placement; assisting patient in securing placement in noninstitutional community facilities and programs.

It is the policy of the state that the least restrictive alternative placement be secured for every patient at every stage of his medical treatment and care. It shall be the duty of the facility to assist the patient in securing placement in noninstitutional community facilities and programs. (Code 1933, § 88-402.21, enacted by Ga. L. 1978, p. 1856, § 1.)

37-7-162. Patient's care and treatment rights.

(a) Each patient in a facility and each person receiving services for alcoholism, drug dependency, or drug abuse shall receive care and treatment that is suited to his needs and is the least restrictive appropriate care and treatment. Such care and treatment shall be administered skillfully, safely, and humanely with full respect for the patient's dignity and personal integrity.

(b) Each patient shall have the right to participate in his care and treatment. The board shall issue regulations to ensure that each patient participates in his care and treatment to the maximum extent possible. Unless the disclosure to the patient is determined by the chief medical officer or the patient's treating physician or psychologist to be detrimental to the physical or mental health of the patient and unless a notation to that effect is made a part of the patient's record, the patient shall have the right to reasonable access to review his medical file, to be told his diagnosis, to be consulted on the treatment recommendation, and to be fully informed concerning his medication, including its side effects and available treatment alternatives.

(c) It is the duty of the chief medical officer to ensure that each patient receives such medical attention as is suitable to his condition and that no treatment shall be given which is not recognized as standard psychiatric treatment, except upon the written consent of the patient or, if applicable, his guardian having capacity to give such consent. If such consent is given by someone other than the patient or such guardian, court approval must be obtained after a full and fair hearing.

(d) If a patient hospitalized under this chapter is able to secure the services of a private physician or psychologist, he shall be allowed to see his physician or psychologist at any reasonable time. The chief medical officer is authorized and directed to establish regulations designed to facilitate examination and treatment which a patient may request from such private physician or psychologist.

(e) Every patient admitted to a facility under this chapter shall be examined by the staff of the admitting facility as soon as possible after his admission. (Code 1933, § 88-402.4, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1991, p. 1059, § 39; Ga. L. 1992, p. 1902, § 27.)

37-7-163. Recognition of patients' physical integrity; patients' right to refuse medication; obtaining consent to treatment and surgery; performance of emergency surgery, immunity of physician; direction of notice of actions taken under Code section.

(a) It shall be the policy of this state to recognize the personal physical integrity of all patients.

(b) It shall be the policy of this state to protect, within reason, the right of every individual to refuse medication except in cases where a physician determines that refusal would be unsafe to the patient or others. If the patient continues to refuse medication after such initial emergency treatment, a concurring opinion from a second physician must be obtained before medication can be continued without the

patient's consent. Further, in connection with any hearing under this chapter, the patient has the right to appear and testify as free from any side effects or adverse effects of the medication as is reasonably possible.

(c) Any patient objecting to the treatment being administered to him shall have a right to request a protective order pursuant to Code Section 37-7-148.

(d) Except as provided in subsections (b) and (e) of this Code section, consent to medical treatment and surgery shall be obtained and regulated by Chapter 9 of Title 31.

(e) In cases of grave emergency where the medical staff of the facility in which an alcoholic, a drug dependent individual, or a drug abuser has been accepted for treatment determines that immediate surgical or other intervention is necessary to prevent serious physical consequences or death and where delay in obtaining consent would create a grave danger to the physical health of such person, as determined by at least two physicians, then essential surgery or other intervention may be administered without the consent of the person, the spouse, next of kin, attorney, guardian, or any other person. In such cases, a record of the determination of the physicians shall be entered into the medical records of the patient and this will be proper consent for such surgery or other intervention. Such consent will be valid notwithstanding the type of admission of the patient and it shall also be valid whether or not the patient has been adjudged incompetent. This Code section is intended to apply to those individuals who, as a result of their advanced age, impaired thinking, or other disability, cannot reasonably understand the consequences of withholding consent to surgery or other intervention as contemplated by this Code section. Any physician, agent, employee, or official who obtains consent or relies on such consent, as authorized by this Code section, and who acts in good faith and within the provisions of this chapter shall be immune from civil or criminal liability for his actions in connection with the obtaining of or the relying upon such consent. Actual notice of any action taken pursuant to this Code section shall be given to the patient and the spouse, next of kin, attorney, guardian, or representative of the patient as soon as practicably possible. (Code 1933, § 88-406.8, enacted by Ga. L. 1977, p. 887, § 1; Code 1933, § 88-402.6, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1995, p. 1302, § 13.)

JUDICIAL DECISIONS

Standards for involuntary retention of patients. — Subsection (e) of O.C.G.A. § 37-7-163 does not contain the exclusive manner for the involuntary confinement of an alcoholic; standards for the involuntary retention of alcoholic patients are found in O.C.G.A. § 37-7-22 (a) and by that section's reference in O.C.G.A.

§§ 37-7-41, 37-7-61, and 37-7-81. Ridgeview Inst., Inc. v. Wingate, 271 Ga. 512, 520 S.E.2d 445 (1999).

Cited in Davis v. Charter By-The-Sea, Inc., 183 Ga. App. 213, 358 S.E.2d 865 (1987); Wingate v. Ridgeview Inst., Inc., 233 Ga. App. 649, 504 S.E.2d 714 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drugs and Controlled Substances, § 90 et seq.

37-7-164. "Representative," "substantial change" defined; consultation by patient's representative with treatment facility; notification of treatment change; guardian's consultation and notification rights.

(a) As used in this Code section, the term:

(1) "Representative" means the representative designated by the patient or, in the absence of such designation, the person selected as a representative in the order of listing under subsection (b) of Code Section 37-7-147 but shall not mean the patient's legal guardian if the department is such guardian. At the time of designation or selection, such representative shall be notified of his right to notice and to consultation under this Code section. In order to exercise such rights, the representative shall notify the department on a form supplied by the department of his election to exercise such rights. Upon receiving such notice, the department shall thereafter provide that representative the notification and consultation required by this Code section until that representative notifies the department to the contrary. A patient need not be notified of his representative's rights under this Code section unless such representative has elected to exercise such rights.

(2) "Substantial change" means a significant change including but not limited to the transfer within a facility of a patient from a unit primarily serving patients under 18 years of age to a unit primarily serving patients 18 years of age or over or the transfer of a patient from one facility to another but shall not include:

(A) Changes in the routine day-to-day care of the patient;

(B) Routine or periodic changes or adjustments in patient medication;

(C) Changes relating to routine or necessary medical care needs of the patient;

(D) Formulation of the patient's initial individualized treatment plan;

(E) Changes specifically contemplated in a treatment plan regarding which the representative has already received notification; or

(F) Discharge of the patient from the facility.

(b) At the time an adult patient's representative is designated or selected under Code Section 37-7-147 and at least every 12 months thereafter, such patient shall be notified that, unless objected to by the patient, such representative will be permitted to consult with the facility regarding the development of the patient's individualized treatment plan and the patient's treatment under such plan. The representative of a minor patient and the representative of an adult patient not objecting to consultation as authorized by this Code section may consult with the facility regarding the development of such patient's individualized treatment plan and the patient's treatment under such plan.

(c) At least seven days prior to any substantial change in the individualized treatment plan or treatment thereunder of an adult patient, the facility to which the patient has been admitted shall notify the patient that it will notify his representative of such change, unless the patient objects to such notification within 24 hours. A patient's representative shall be notified at least five days prior to any substantial change in such patient's individualized treatment plan or the treatment under such plan unless such patient is an adult and objects to such notification.

(d) In an emergency where the delay due to providing prior notification under subsection (c) of this Code section would create serious damage to the health of the patient, such a substantial change may be made without such prior notification. The patient's record shall specify the circumstances surrounding the emergency. Within 48 hours after the change, an adult patient shall be notified of his right to object within 24 hours to his representative's being notified of such change. A patient's representative shall be notified of such change within five days after such change occurs unless the patient is an adult and objects to such notification pursuant to subsection (c) of this Code section.

(e) Notification to representatives under subsections (c) and (d) of this Code section may be made by telephone if the date and time of such notification is entered on the patient's clinical record and if such notification is followed within 15 days by written notification.

(f) A patient's legal guardian shall have the consultation and notification rights of a patient's representative under subsections (b) through (d) of this Code section regardless of whether the patient is a minor or whether the patient objects to such consultation or notification. A patient for whom a legal guardian has been appointed shall not be notified of any right to object under this Code section. (Code 1933, § 88-402.24, enacted by Ga. L. 1980, p. 1451, § 1.)

37-7-165. Mistreatment, neglect, or abuse of patients; use of medication, seclusion, or physical restraints.

(a) Mistreatment, neglect, or abuse in any form of any patient is prohibited. Medication in quantities that interfere with the patient's treatment program is prohibited. All medication, seclusion, or physical restraints are to be used solely for the purposes of providing effective treatment and protecting the safety of the patient and other persons.

(b) Physical restraints shall not be applied unless they are determined by an attending physician, a psychologist involved in the care and treatment of a patient, or a clinical nurse specialist in psychiatric/mental health involved in the care and treatment of the patient to be absolutely necessary in order to prevent a patient from seriously injuring himself or others and are required by the patient's medical needs. Such determination shall expire after 24 hours. An attending physician, a psychologist involved in the care and treatment of a patient, or a clinical nurse specialist in psychiatric/mental health involved in the care and treatment of the patient must then make a new determination before the restraint may be continued. Every use of a restraint and the reasons therefor shall be made a part of the clinical record of the patient. A copy of each such entry or a summary of such entry shall be forwarded to the chief medical officer for review. A patient placed in physical restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be made. When the application of a restraint is necessary in emergency situations to protect the patient from immediate injury to himself or herself or to others, restraints may be authorized by attending staff who must immediately report the action taken to the physician and any psychologist involved in the care and treatment of the patient. The facility shall have written policies and procedures which govern the use of restraints and which clearly delineate, in descending order, the personnel who can authorize the use of restraints in emergency situations.

(c) For the purposes of this Code section, those devices which restrain movement, but are applied for protection from accidental injury or required for the medical treatment of the patient's physical condition or for supportive or corrective needs of the patient, shall not be considered physical restraints. However, devices used in such situations must be authorized and applied in compliance with the facility's policies and procedures. The use of such devices shall be a part of the patient's individualized treatment plan. (Code 1933, § 88-402.5, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1982, p. 937, §§ 1, 12; Ga. L. 1997, p. 911, § 6.)

Cross references. — Abuse and mistreatment of hospital patients, residents of long-term care facilities, and other institutions, §§ 31-7-9, 31-8-50 et seq., 31-8-80 et seq., 31-8-100 et seq.

37-7-166. (Effective until January 1, 2013. See note.) Maintenance, confidentiality, and release of clinical records; disclosure of confidential or privileged patient information.

(a) A clinical record for each patient shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises as determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:

(1) A copy of the record may be released to any person or entity designated in writing by the patient or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court;

(1.1) A copy of the record of a deceased patient or deceased former patient may be released to or in response to a valid subpoena of a coroner or medical examiner under Chapter 16 of Title 45, except for matters privileged under the laws of this state;

(2) When a patient is admitted to a facility, a copy of the record or information contained in the record from another facility, community mental health center, or private practitioner may be released to the admitting facility. When the treatment plan of a patient involves transfer of that patient to another facility, community mental health center, or private practitioner, a copy of the record or information contained in the record may be released to that facility, community mental health center, or private practitioner;

(3) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient;

(4) A copy of the record shall be released to the patient's attorney if the attorney so requests and the patient, or the patient's legal guardian, consents to the release;

(5) In a bona fide medical emergency, as determined by a physician treating the patient, the chief medical officer may release a copy of the record to the treating physician or to the patient's psychologist;

(6) At the request of the patient, the patient's legal guardian, or the patient's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;

(7) Except for matters privileged under the laws of this state, the record shall be produced in response to a court order issued by a court of competent jurisdiction pursuant to a full and fair show cause hearing;

(8) A copy of the patient's clinical record may be released under the conditions and for the uses and purposes set forth in Code Section 31-7-6;

(9) A copy of the record may be released to the legal representative of a deceased patient's estate, except for matters privileged under the laws of this state; and

(10) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a patient in the facility, and the name, address, and last known whereabouts of any alleged patient perpetrator.

(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section 24-9-21, 24-9-40, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section 24-9-21, 24-9-40, or 43-39-16. (Code 1933, § 88-402.12, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 744, §§ 4, 5; Ga. L. 1984, p. 594, § 1; Ga. L. 1985, p. 996, § 1; Ga. L. 1991, p. 1059, §§ 40, 41; Ga. L. 1994, p. 1072, § 6; Ga. L. 1995, p. 10, § 37.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, the amendment by Ga. L. 1991, p. 1059, § 40, has been treated as an amendment to paragraph (5), not paragraph (6), since this was the apparent intent.

Editor's notes. — Code Section 37-7-166 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

JUDICIAL DECISIONS

Protected communications. — Georgia law has an exceedingly strict view as to what are privileged communications; not only "communications" but "admissions" are privileged; what is protected is not merely words, but "disclosures made in confidence." Mrozinski v. Pogue, 205 Ga. App. 731, 423 S.E.2d 405, cert. denied, 205 Ga. App. 901, 423 S.E.2d 405 (1992).

Parent's standing to sue for unauthorized disclosure of child's records. — Father had standing to file suit for unauthorized disclosure of his minor daughter's clinical records and for unauthorized release of privileged material regarding his minor daughter. Mrozinski v. Pogue, 205 Ga. App. 731, 423 S.E.2d 405, cert. denied, 205 Ga. App. 901, 423 S.E.2d 405 (1992).

In an action arising from the unauthorized release of plaintiff's psychiatric records by a hospital authority, under the facts of the case, and because of the strong public policy of maintaining strict compliance with the requirements governing release of psychiatric records, the trial court erred in granting summary judgment to defendants. Sletto v. Hospital Auth., 239 Ga. App. 203, 521 S.E.2d 199 (1999).

RESEARCH REFERENCES

ALR. — Testamentary capacity as affected by use of intoxicating liquor or drugs, 9 ALR3d 15.

37-7-166. (Effective January 1, 2013. See note.) Maintenance, confidentiality, and release of clinical records; disclosure of confidential or privileged patient information.

(a) A clinical record for each patient shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises as determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:

(1) A copy of the record may be released to any person or entity designated in writing by the patient or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court;

(1.1) A copy of the record of a deceased patient or deceased former patient may be released to or in response to a valid subpoena of a coroner or medical examiner under Chapter 16 of Title 45, except for matters privileged under the laws of this state;

(2) When a patient is admitted to a facility, a copy of the record or information contained in the record from another facility, community mental health center, or private practitioner may be released to the admitting facility. When the treatment plan of a patient involves transfer of that patient to another facility, community mental health

center, or private practitioner, a copy of the record or information contained in the record may be released to that facility, community mental health center, or private practitioner;

(3) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient;

(4) A copy of the record shall be released to the patient's attorney if the attorney so requests and the patient, or the patient's legal guardian, consents to the release;

(5) In a bona fide medical emergency, as determined by a physician treating the patient, the chief medical officer may release a copy of the record to the treating physician or to the patient's psychologist;

(6) At the request of the patient, the patient's legal guardian, or the patient's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;

(7) Except for matters privileged under the laws of this state, the record shall be produced in response to a court order issued by a court of competent jurisdiction pursuant to a full and fair show cause hearing;

(8) A copy of the patient's clinical record may be released under the conditions and for the uses and purposes set forth in Code Section 31-7-6;

(9) A copy of the record may be released to the legal representative of a deceased patient's estate, except for matters privileged under the laws of this state; and

(10) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a patient in the facility, and the name, address, and last known whereabouts of any alleged patient perpetrator.

(b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section 24-5-501, 24-12-1, or 43-39-16.

(c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or

communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section 24-5-501, 24-12-1, or 43-39-16. (Code 1933, § 88-402.12, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1979, p. 744, §§ 4, 5; Ga. L. 1984, p. 594, § 1; Ga. L. 1985, p. 996, § 1; Ga. L. 1991, p. 1059, §§ 40, 41; Ga. L. 1994, p. 1072, § 6; Ga. L. 1995, p. 10, § 37; Ga. L. 2011, p. 99, § 55/HB 24.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-5-501, 24-12-1," for "Code Section 24-9-21, 24-9-40," near the end of subsections (b) and (c). See editor's note for applicability.

Editor's notes. — Code Section 37-7-166 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

37-7-167. Right of patient to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.

(a) Except as provided in subsection (b) of Code Section 37-7-162, every patient shall have the right to examine all medical records kept in the patient's name by the department or the facility where the patient was hospitalized or treated.

(b) Every patient shall have the right to request that any inaccurate information found in his medical record be corrected.

(c) The board shall promulgate reasonable rules and regulations to implement subsections (a) and (b) of this Code section. Nothing contained in this Code section shall be construed to require the deletion of information by the department nor constrain the department from destroying patient records after a reasonable passage of time.

(d) Notwithstanding paragraphs (7) and (8) of Code Section 15-9-37, all files and records of a court in a proceeding under this chapter shall remain sealed and shall be open to inspection only upon order of the court issued after notice to the patient and subject to the provisions of Code Section 37-7-166 pertaining to the medical portions of the record, provided that the court may refer to such files and records in any subsequent proceeding under this chapter concerning the same patient, on condition that the files and records of such subsequent proceeding

will then be sealed in accordance with this subsection. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, but without personal identifying information and under whatever conditions upon their use and distribution that the court may deem proper; and the court may punish by contempt any violations of those conditions. Otherwise, inspection of the sealed files and records may be permitted only by an order of the court upon petition by the person who is the subject of the records and only by those persons named in the order. (Code 1933, § 88-402.13, enacted by Ga. L. 1978, p. 1856, § 1.)

Cross references. — Release of medical information generally, § 24-9-40 et seq.

37-7-168. Right of patient's attorney to interview physician or psychologist and staff attending patient; establishment of regulations as to release of information to patient's attorney.

The patient's attorney shall have the right, at reasonable times, to interview the physician or psychologist and staff who have attended or are now attending the patient in any facility and to have the patient's records interpreted by them. The chief medical officer is authorized and directed to establish reasonable regulations to make available to the patient's attorney all such information in the possession of the facility as the attorney requires in order to advise and represent the patient concerning his hospitalization. (Code 1933, § 88-402.20, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1991, p. 1059, § 42.)

Cross references. — Release of medical information generally, § 24-9-40 et seq.

CHAPTER 8

TREATMENT OF ALCOHOLICS AND INTOXICATED PERSONS

Sec.
37-8-1 through 37-8-53 [Repealed].

37-8-1 through 37-8-53.

Reserved. Repealed by Ga. L. 1994, p. 437, §§ 10 and 11, effective July 1, 1994.

Editor's notes. — Ga. L. 1994, p. 437, §§ 10, 11, effective July 1, 1994, repealed and reserved this chapter concerning the treatment of alcoholics and intoxicated persons. This chapter was based on Ga. L. 1974, p. 200, §§ 1-21; Ga. L. 1978, p. 2048, §§ 1-3; Ga. L. 1982, p. 3, § 37; Code 1981, Code Section 37-8-53, enacted by Ga. L. 1982, p. 782, § 2; Ga. L. 1983, p. 684, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 1185, § 1; Ga. L. 1986, p. 982, § 14; Ga. L. 1987, p. 3, § 37; Ga. L. 1987, p. 797, § 9; and Ga. L. 1989, p. 501, § 1, and consisted of 37-8-1 through 37-8-12 (Article 1), 37-8-30 through 37-8-36 (Article 2), 37-8-50 through 37-8-52 (Article 3), and 37-8-53 (Article 4).

CHAPTER 9

PAYMENT OF EXPENSES FOR SUPPORT, TREATMENT, AND CARE OF PATIENTS IN STATE INSTITUTIONS GENERALLY

Sec.
37-9-1. Short title.
37-9-2. Definitions.
37-9-3. Payment for cost of care as not affecting nature or quality of care.
37-9-4. Liability of patient for cost of care; time of payment; inability of department to collect assessment from patient or failure of patient's assessment to cover cost of care.
37-9-5. Assessment of persons liable for cost of care generally.
37-9-6. Standards for determination of assessments for less than full cost of care.
37-9-7. Inquiry into and determination of income and assets; declarations by persons liable for cost of care; access to income tax records; confidentiality; attestation of indigent financial status.
37-9-8. Use of assets other than income for determination of assessments; assets exempt from determination; levy of assessment.
37-9-9. Exhaustion of benefits under other programs or plans required prior to expenditure of public funds; determination of assessments; assignment of benefits; subrogation.
37-9-10. Hearings.
37-9-11. Billing by department; authority to maintain action for collection.
37-9-12. Deposit of funds collected [Repealed].
37-9-13. Promulgation of rules and regulations by board.

Cross references. — Payment of costs of hospital care for the indigent, § 31-8-1 et seq. Medical assistance generally, § 49-4-140 et seq.

Administrative rules and regulations. — Rules and regulations on "Mental Health and Mental Retardation and Substance Abuse," Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Chapters 290-4-1 and 290-4-3 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Effect of chapter. — Department of Veterans Services is not authorized to charge and collect fees for services rendered to residents of veterans' nursing homes operated by the State of Georgia is not affected by enactment of Ga. L. 1979, p. 834. 1980 Op. Att'y Gen. No. 80-7 (see O.C.G.A. Ch. 9, T. 37).

37-9-1. Short title.

This chapter shall be known and may be cited as "The Patient Cost of Care Act." (Ga. L. 1979, p. 834, § 1.)

Law reviews. — For note examining constitutional implications of this chapter, with a comparison of similar statutes and their treatment in other jurisdictions, see

12 Mercer L. Rev. 355 (1961). For note, "The Parity Cure: Solving Unequal Treatment of Mental Illness Health Insurance Through Federal Legislation," see 44 Ga. L. Rev. 511 (2010).

37-9-2. Definitions.

As used in this chapter, the term:

(1) "Assessment" means a determination by the department of the amount payable by the persons liable for cost of care for services rendered to a patient; such amount shall be either the full cost of care or, if applicable, the amount payable toward cost of care, determined in accordance with the requirements of Code Section 37-9-5. It is expressly provided that there shall be a rebuttable presumption that the full cost of care is to be imposed. This presumption shall prevail until testimony, documentation, or evidence is provided pursuant to other provisions of this chapter.

(2) "Cost of care" means the costs incurred for the support, care, and treatment of each individual patient or the per patient average of such costs as determined by the department on the basis of the estimated current operating costs of the hospital or an identifiable part or section thereof providing such services.

(3) "Income," except for patients who are residents of other states, means that amount determined by adding to the gross income as now or hereafter defined in Georgia income tax laws, minus deductions and personal exemptions as authorized by such income tax laws, the items listed in this paragraph, if such items are not already included in gross income as defined above. For a patient who is a resident of another state, "income" means the same as above except no deductions will be made for any deductions or personal exemptions as authorized by Georgia income tax laws. The following items are to be added, respectively:

(A) Any amounts received by or on behalf of the person liable for cost of care from accident insurance or workers' compensation for total or partial incapacity to work, plus the amount of any damages received by or on behalf of the person liable for cost of care, whether by suit or agreement, on account of such injuries or sickness;

(B) The net income from property acquired by gift, bequest, devise, or descent;

(C) Interest upon obligations of the United States government or of this state or of a political subdivision thereof;

(D) The net income from individual holdings of stock in banks and trust companies incorporated under the banking laws of this state or of the United States;

(E) Retirement income, social security benefits, veterans' benefits, and any other benefits that could be applied for the support of the patient;

(F) The net income from any other assets, including but not limited to personal property, real property, or mixed property, and any other property or estate wherever located and in whatever form, inclusive of any assets sold or transferred within a period of 90 days prior to the date services were first rendered to the patient by a hospital.

(4) "Patient" means any person who is admitted to or who receives services from a state hospital.

(5) "Persons liable for cost of care" means:

(A) The patient or his estate;

(B) The patient's spouse;

(C) The parent or parents of any patient under 18 years of age;

(D) Any fiduciary or representative payee holding assets for the patient or on his behalf, including, in his representative capacity, the guardian, trustee, executor, or administrator of any trust, estate, inheritance, or fund in which a patient has a legal or beneficial interest;

(E) Any person, if not otherwise liable, listed as the insured member of a contract, plan, or benefit to the extent that such contract, plan, or benefit provides payment of hospitalization, medical expenses, and other health care services for the patient as a covered beneficiary or dependent;

(F) A stepparent or any other person residing with and providing support of a patient under 18 years of age who has not been legally adopted by such individual, with maximum liability limited to the amount such stepparent or other individual is authorized by Georgia income tax laws to claim as a standard deduction and personal exemption for the patient; provided, however, that this limitation shall not apply to liability pursuant to other provisions of this chapter regarding hospital, health, and other medical insurance, program, or plan benefits or subrogation rights.

(6) "State hospital" means any state hospital which now or hereafter comes under the control of the department and any facility operated in conjunction therewith. (Ga. L. 1960, p. 1138, § 1; Ga. L. 1966, p. 143, §§ 1, 2; Ga. L. 1979, p. 834, § 2; Ga. L. 1984, p. 22, § 37; Ga. L. 1985, p. 987, § 1; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 6, § 37; Ga. L. 1992, p. 1445, § 1; Ga. L. 2002, p. 1324, § 1-17; Ga. L. 2009, p. 453, § 3-20/HB 228.)

OPINIONS OF THE ATTORNEY GENERAL

Veterans in state institutions not to be charged for services. — General Assembly intended that veterans placed in state institutions not be charged for services while in these institutions. As the General Assembly intended that veterans not be charged, then those veterans who were actually in the nursing homes should not be charged. 1979 Op. Att'y Gen. No. 79-5.

37-9-3. Payment for cost of care as not affecting nature or quality of care.

Care rendered to all patients in state hospitals shall be of the same nature and quality without regard to whether the payment of any sum or sums is made under this chapter for the cost of care. (Ga. L. 1960, p. 1138, § 11; Ga. L. 1979, p. 834, § 11.)

Law reviews. — For note, "Payment of Cost for Care of Patients in State Institutions Act — A New Approach in Georgia," see 12 Mercer L. Rev. 343 (1961).

37-9-4. Liability of patient for cost of care; time of payment; inability of department to collect assessment from patient or failure of patient's assessment to cover cost of care.

Each patient receiving services from a state hospital shall be legally responsible for, and shall pay to the department, the cost of his care received from a state hospital. Payments for cost of care shall be payable following the receipt of services in accordance with standards and procedures established by the board. In the event the department is unable to collect the assessment from the patient or in the event the patient's assessment is less than the full cost of care for such patient, all other persons liable for the cost of care for such patient shall pay to the department their respective assessments as provided by Code Section 37-9-5. (Ga. L. 1960, p. 1138, §§ 4, 5; Ga. L. 1966, p. 143, §§ 3, 4; Ga. L. 1979, p. 834, § 5; Ga. L. 1982, p. 3, § 37.)

Law reviews. — For comment advocating legislative determination of parental liability for costs of institutional custody of child involuntarily committed to a mental health facility in response to criminal behavior in light of Treglown v. Department of Health & Social Servs., 38 Wis. 2d 317, 156 N.W.2d 363 (1968), see 19 Mercer L. Rev. 457 (1968).

37-9-5. Assessment of persons liable for cost of care generally.

(a) The department shall determine all persons who are liable for the cost of care of a patient and notify such persons of their joint and several liability and of their assessment. Such notice shall offer opportunity for any person so notified to be heard to show cause, if there

be any, why such person should not be liable for payment of the assessment.

(b) When the department determines that persons legally liable for the cost of care of a patient do not have sufficient income or assets to pay the entire cost of care, the department shall determine for each such person the amount payable toward cost of care which shall be a fair and equitable amount based on ability to pay determined in accordance with the requirements of Code Section 37-9-6. When applicable, the notice provided for in subsection (a) of this Code section shall reflect as the assessment the amount payable toward cost of care provided for in this chapter; and if a hearing is requested by any person receiving such notice, such person may question his liability for cost of care as well as the amount of his assessment. Failure of the patient or other persons liable for cost of care to provide financial information to the department required to determine assessments on the basis of ability to pay in accordance with the requirements of Code Section 37-9-6 or failure of the patient or other persons liable for cost of care to cooperate with the department in obtaining payment of any insurance or health benefits available for a patient may result in assessment of such persons of the full cost of care of the patient. Failure of the patient or other persons liable for cost of care to cooperate with the department in applying on behalf of the patient for federal benefits and insurance, program, or plan benefits in order that a determination may be made of eligibility for such benefits may also result in assessment of such persons of the full cost of care of the patient and the burden of providing information to reduce the full cost of care is on the patient or other persons liable for cost of care.

(c) Any investigation or hearing regarding ability to pay shall not operate to deny or delay admission of a patient to a hospital or to deny or delay providing services for such patient.

(d) It shall be the duty of the department to reexamine the assessment periodically and either reduce or increase such assessment as hereinafter provided in accordance with changes in the ability to pay of the person liable for cost of care. If the department determines that the economic circumstances of a person liable for cost of care have improved to an extent justifying an increase in the assessment, any such increase shall apply only to cost of care for services rendered for the patient after the effective date of the increase in assessment and no such increase shall cause the assessment to exceed the total cost of care. The department may not increase an assessment as provided in this Code section without affording the person liable for cost of care an opportunity for a hearing on the question of the increase in the assessment. A person liable for cost of care may apply to the department for a change in the assessment when the person's economic circumstances have

changed sufficiently to affect adversely his future ability to pay. If an assessment for services previously rendered for a patient is being paid in accordance with a scheduled plan of payments approved by the department, then a reduction in assessment because of a change in the economic circumstances affecting adversely the ability to pay of the person liable for cost of care may apply to that portion of the assessment for services previously rendered for the patient which remain unpaid as of the date of the reduction of the assessment as well as to the assessment for cost of services rendered after the date of the reduction. However, no such reduction shall require the refund of any payments made on an assessment prior to the date of the reduction of the assessment. After investigation and hearing, the department shall act upon the application made by the person liable for cost of care. Any redetermination of the assessment pursuant to this subsection shall be subject to the requirements of Code Section 37-9-6. Notwithstanding any reexamination or corresponding adjustment of an assessment which might be afforded, each assessment shall be valid for a period of 12 months from the date of the initial assessment or any reassessment thereafter. No reduction, increase, or opportunity for hearing shall be allowed after the assessment period.

(e) The department may accept payment for full cost of care if any person liable for cost of care offers such payment in lieu of declaring financial circumstances and having an assessment determined by hearing. Any assessment made pursuant to the authority of this subsection shall be subject to redetermination as provided by subsection (d) of this Code section if requested by the person liable for cost of care.

(f) The department shall adopt and comply with procedures to inform adequately patients and other persons determined liable for the cost of care of their right to hearings and of their right to request reassessments. (Ga. L. 1960, p. 1138, §§ 6, 9, 10; Ga. L. 1979, p. 834, § 3; Ga. L. 1985, p. 987, § 2; Ga. L. 1992, p. 6, § 37; Ga. L. 1992, p. 1445, § 2.)

37-9-6. Standards for determination of assessments for less than full cost of care.

The board shall establish standards for determining assessments when such assessments are less than the full cost of care. Such standards shall be based on the income, assets, and other circumstances of the persons liable for cost of care and shall include consideration of the number of dependents, as defined under Georgia income tax law and regulations; legal rights to payment under any insurance agreement, and other evidence of ability to pay; but no assessment shall be fixed or collected on the basis of any assets exempted by subsection

(b) of Code Section 37-9-8. In determining assessments for persons liable for cost of care, the department shall develop procedures to ensure that no dependent, deduction, or personal exemption as defined by Georgia income tax law will be reflected more than once in the determination of assessments for any one patient. In establishing standards to determine such assessments, the board shall adopt criteria to be applied uniformly to all persons liable for cost of care, except that the board may adopt separate criteria for assessing monthly benefits or funds from any source to cover cost of care, support, and treatment provided to patients who are hospitalized for longer than three months and whose current needs, as defined by the Social Security Administration, are being met. However, the board shall ensure that the assessment made each month shall allow the recipients of such benefits or funds to retain at a minimum an amount as a personal allowance equal to the amount of the personal needs allowance allowed beneficiaries under the state medical assistance plan. Further, such standards will include special provisions for assessing developmental disabilities respite care allowed by law or duly adopted departmental regulations, where such admissions are legally limited to 56 days of care a year. To the extent practicable, such criteria shall ensure that persons having the same or substantially the same financial ability to pay cost of care shall have the same or substantially the same financial obligation to pay such cost of care. (Ga. L. 1979, p. 834, § 8; Ga. L. 1984, p. 968, § 1; Ga. L. 1992, p. 1445, § 3; Ga. L. 2009, p. 453, § 3-5/HB 228; Ga. L. 2011, p. 337, § 11/HB 324.)

The 2011 amendment, effective July 1, 2011, substituted "developmental disabilities respite care" for "developmentally disabled respite care admissions under Code Section 37-4-21 or any other respite program" in the next-to-last sentence of this Code section.

JUDICIAL DECISIONS

Cited in Reserve Life Ins. Co. v. Davis, 224 Ga. 665, 164 S.E.2d 132 (1968).

37-9-7. Inquiry into and determination of income and assets; declarations by persons liable for cost of care; access to income tax records; confidentiality; attestation of indigent financial status.

(a) The department, through its duly authorized agents, shall have the authority to investigate or otherwise determine the income and assets of the patient or his estate and when necessary the income and assets of all other persons liable for the cost of care of such patient in order to determine ability to pay cost of care. All persons liable for cost of care must provide signed consent forms necessary to authorize and conduct an investigation to determine the income and assets of such

persons in order to determine ability to pay cost of care. The department shall further have the authority to contract with any person, firm, or corporation which it finds necessary to provide the information appropriate to the carrying out of its duties under this chapter.

(b) The department shall require declarations to be filed by the patient or other persons liable for cost of care necessary to determine the assessments required by this chapter and shall prescribe the form and content thereof. All such declarations are to be regarded as essential to carrying out the public policy of this state; and any person who knowingly falsifies such declarations shall be charged as for false swearing. Failure by the patient or other persons liable for cost of care to (1) provide information required by such declarations or (2) provide signature of consent for the department to conduct an investigation authorized by subsection (a) of this Code section shall create a rebuttable presumption that the patient or other persons liable for cost of care consent to and agree with the assessment of the full cost of care, and the declaration shall contain on its face, conspicuously and in clear language, a statement to that effect.

(c) The department, through its duly authorized agents, shall have access to Georgia income tax records for the purpose of obtaining necessary information to enforce this chapter. Upon the request of the department or its duly authorized agents, the state revenue commissioner and his agents or employees shall disclose such income tax information contained in any report or return required under Georgia law as may be necessary to enforce the provisions of this chapter. Any tax information secured from the federal government by the Department of Revenue pursuant to express provisions of Section 6103 of the Internal Revenue Code may not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information or tax returns under the authority of this subsection shall be considered either an officer or employee as those terms are used in subsection (a) of Code Section 48-7-60; and as such an officer or employee, any person receiving any tax information or returns under the authority of this subsection shall be subject to Code Section 48-7-61.

(d) Any evidence, records, or other information obtained by the department or its duly authorized agents pursuant to the authority of this Code section shall be confidential and shall be used by the department or its agents only for the purposes of enforcing this chapter and shall not be released for any purpose other than a hearing provided for by this chapter.

(e) The department shall develop procedures to ensure that persons with no other documentation or evidence may sign an affidavit attesting to their indigent financial status. (Ga. L. 1960, p. 1138, § 3; Ga. L. 1979, p. 834, § 3; Ga. L. 1982, p. 3, § 37; Ga. L. 1987, p. 191, § 9; Ga. L. 1992, p. 1445, § 4.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

U.S. Code. — Section 6103 of the Internal Revenue Code, referred to in subsection (c), is codified as 26 U.S.C. § 6103.

Law reviews. — For comment advocating legislative determination of parental liability for costs of institutional custody of child involuntarily committed to a mental health facility in response to criminal behavior in light of Treglown v. Department of Health & Social Servs., 38 Wis. 2d 317, 156 N.W.2d 363 (1968), see 19 Mercer L. Rev. 457 (1968).

37-9-8. Use of assets other than income for determination of assessments; assets exempt from determination; levy of assessment.

(a) In addition to the use of income for determining assessments provided for in this chapter and for the payment thereof, any other assets of a person liable for cost of care, except as provided in subsection (b) of this Code section, shall be considered in determining an assessment and shall be liable to be assessed for the payment thereof. Such assets shall include any tangible or intangible property or any combination thereof and shall also include the net proceeds derived from the disposition of any such property including any disposition of any such property which took place 90 days or less prior to the date services were first rendered to the patient by a hospital. When the income of a person liable for cost of care is sufficient to determine that an assessment should be made for the total cost of care, it shall not be necessary for the department to investigate and determine the other assets of such person; but such investigation and determination may be made by the department if necessary to collect the assessment from the person liable for cost of care.

(b) The following assets of a person liable for cost of care shall be exempt from subsection (a) of this Code section:

(1) Real property which qualifies for a homestead exemption from ad valorem taxation; and

(2) Any other real property which constitutes the principal residence of the person liable for cost of care but which does not qualify for a homestead exemption under paragraph (1) of this subsection.

(c) Notwithstanding any other provisions of this Code section, as of January 1, 1993, following six months of continuous inpatient hospi-

talization, the department is expressly authorized to levy an assessment for the full cost of care against the assets of all patients having assets accumulated from government benefit payments in excess of amounts allowed by the eligibility resource limit for institutionalized residents established by Title XIX of the federal Social Security Act of 1935, as amended, and regulations promulgated pursuant thereto, until said assets are reduced to a level which would establish resource eligibility under such program for the patient; provided, however, that the assets listed in subsection (b) of this Code section shall be exempt from such assessment if said assets would also be an excluded resource under eligibility criteria of Title XIX of the federal Social Security Act. Following April 13, 1992, the department shall provide notice regarding the provisions of this subsection to patients and family members or other appropriate persons who may be affected by the provisions of this subsection.

(d) Nothing in this Code section shall be construed to supersede the provisions of Chapter 12 of Title 53, "The Revised Georgia Trust Code of 2010." (Ga. L. 1979, p. 834, § 7; Ga. L. 1983, p. 3, § 58; Ga. L. 1992, p. 1445, § 5; Ga. L. 2010, p. 579, § 16/SB 131.)

The 2010 amendment, effective July 1, 2010, substituted "'The Revised Georgia Trust Code of 2010.'" for "the 'Georgia Trust Act.'" at the end of subsection (d).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "April 13, 1992" was substituted for "the effective date of this Code section" in the last sentence of subsection (c).

37-9-9. Exhaustion of benefits under other programs or plans required prior to expenditure of public funds; determination of assessments; assignment of benefits; subrogation.

Notwithstanding any other provisions of law, the department shall not be required to expend public funds for the purpose of providing support, care, and treatment covered under this chapter to any patient until such patient has exhausted his or her eligibility and receipt of benefits under all other existing or future private, public, local, state, or federal programs or plans. Before the department expends public funds for a patient's cost of care, the department may assess and recover the cost of a patient's care from the patient or other persons liable for such patient's cost of care if such patient is eligible for benefits under any other program or plan. In the event the patient is covered by an insurance contract or any other plan or benefit of any nature providing for payment of hospitalization, medical expenses, and other health care services or any combination thereof, such patient or other person liable for the cost of care of such patient shall pay or cause to have paid from such insurance, plan, or benefit without deduction, exemptions, or credits, the full cost of care of the patient, or that portion thereof

covered by such insurance, plan, or benefit. The assessment for cost of care of the patient made by the department pursuant to Code Section 37-9-5 shall be for the total amount payable by such insurance, plan, or benefit up to the total cost of care or for that portion of cost of care payable by such insurance, plan, or benefit; and if the proceeds from such insurance, plan, or benefit are less than the total cost of care, such assessment shall include an assessment based on the remaining balance, except where full payment of the balance or a portion thereof is required by a health insurance program or other plan or benefit, in which case the balance or at least the required portion thereof will be the assessment. Further, the department shall comply with all federally funded health and medical insurance programs which require established amounts payable by beneficiaries and is authorized to accept amounts payable toward cost of care under any insurance program, plan, or benefit if paid according to the provisions of such programs, plans, or benefits even though the amounts payable may exceed cost of care amounts as provided by this chapter. The department shall develop procedures to apply the provisions of this chapter, specifically Code Section 37-9-5, to any amounts which remain payable by the patient or beneficiaries under a federally funded health and medical insurance program, provided that the application of any such procedures does not invalidate payment of benefits under the program. For the purpose of carrying out this Code section, the department is authorized to accept assignment of benefits payable under such insurance, plans, or benefits; but the department shall not require the assignment of such benefits as a condition precedent to the admission of a patient to a hospital or as a condition precedent to providing services for such patient. In order to collect maximum benefits payable toward cost of care, the department is authorized to contract with any insurance program, plan, or benefit to become a participating member hospital if payments are not made or are made at a lesser than full coverage amount to nonparticipating members. Moreover, the department or its designated agents will have subrogation rights to the recovery of a patient's cost of care that the patient or other person liable for the patient's cost of care may have against any person, estate, organization, entity, or plan. Further, if any patient or other person liable for the cost of a patient's care receives benefits or funds in settlement, judgment, or otherwise for any health care, medical expenses, or hospitalization or other care directly related to services and care provided by the department to a patient, the patient or other person liable for cost of care will pay or cause to have paid the full cost of care or that portion thereof recovered which is directly related to the care provided by the department. This right of subrogation is cumulative and in addition to any other remedy and this right shall be available for any enforcement or collection process which is contemplated under other provisions of this chapter. (Ga. L. 1979, p. 834, § 6; Ga. L. 1984, p. 968, § 2; Ga. L. 1992, p. 1445, § 6.)

Law reviews. — For comment advocating legislative determination of parental liability for costs of institutional custody of child involuntarily committed to a mental health facility in response to criminal behavior in light of Treglown v. Department of Health & Social Servs., 38 Wis. 2d 317, 156 N.W.2d 363 (1968), see 19 Mercer L. Rev. 457 (1968).

37-9-10. Hearings.

Hearings shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and judicial review of a final decision by the department shall be as provided in Code Section 50-13-19. (Ga. L. 1979, p. 834, § 9.)

RESEARCH REFERENCES

ALR. — Effect of fraud to toll the period for bringing action prescribed in statute creating the right of action, 15 ALR2d 500.

Fraud as extending statutory limitations period for contesting will or its probate, 48 ALR4th 1094.

37-9-11. Billing by department; authority to maintain action for collection.

The department shall bill persons liable for cost of care for the amount due on their assessments in the same manner as other debts and accounts. No bill shall be payable unless it contains the dates of service for which the costs billed therein were incurred. The department is authorized to maintain in the name of the department and the State of Georgia any action at law or equity in any court of this state or any other state which may be necessary to collect such sums. (Ga. L. 1960, p. 1138, § 10; Ga. L. 1979, p. 834, § 10; Ga. L. 1996, p. 949, § 1.)

Editor's notes. — Ga. L. 1996, p. 949, § 2, effective April 15, 1996, provides that the 1996 amendment becomes effective only when funds are specifically appropriated for purposes of that Act in an Appropriations Act making specific reference to that Act. Funds were not appropriated at the 1996, 1997, or 1998 session of the General Assembly. Funds were appropriated at the 1999 session of the General Assembly.

Law reviews. — For comment advocating legislative determination of parental liability for costs of institutional custody of child involuntarily committed to a mental health facility in response to criminal behavior in light of Treglown v. Department of Health & Social Servs., 38 Wis. 2d 317, 156 N.W.2d 363 (1968), see 19 Mercer L. Rev. 457 (1968).

37-9-12. Deposit of funds collected.

Reserved. Repealed by Ga. L. 1992, p. 1445, § 7, effective April 13, 1992.

Editor's notes. — This Code section was based on Ga. L. 1979, p. 834, § 13.

37-9-13. Promulgation of rules and regulations by board.

The board shall have the authority to promulgate necessary rules and regulations to implement and carry out this chapter. Such rules and regulations shall be adopted and promulgated pursuant to the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1979, p. 834, § 12.)

CHAPTER 10

INTERSTATE COMPACT ON MENTAL HEALTH

Sec.
37-10-1. Short title.
37-10-2. Interstate Compact on Mental Health.
37-10-3. Applicability of certain enforcement and administrative provision to this chapter.

37-10-1. Short title.

This chapter shall be known and may be cited as the "Interstate Compact on Mental Health Act." (Ga. L. 1973, p. 796, § 1.)

Law reviews. — For note, "The Parity Cure: Solving Unequal Treatment of Mental Illness Health Insurance Through Federal Legislation," see 44 Ga. L. Rev. 511 (2010).

37-10-2. Interstate Compact on Mental Health.

The Interstate Compact on Mental Health is enacted into law and entered into by the State of Georgia with any and all states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The Contracting States solemnly agree that:

ARTICLE I.

The party States find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party States find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party States to provide the necessary legal basis for the institutionalized or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party States in terms of such welfare.

ARTICLE II.

As used in this compact, the following terms shall have the meanings respectively ascribed to them in this Article:

(a) "Sending State" shall mean a party State from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving State" shall mean a party State to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party State or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending State, for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself or his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any State, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III.

(a) Whenever a person physically present in any party State shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that State irrespective of his residence, settlement or citizenship qualifications.

(b) The provision of paragraph (a) of this Article to the contrary notwithstanding, any patient may be transferred to an institution in another State whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location

of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No State shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this Article unless the sending State has given advance notice of its intention to send the patient, furnished all available medical and other pertinent records concerning the patient, given the qualified medical or other appropriate clinical authorities of the receiving State an opportunity to examine the patient if said authorities so wish; and unless the receiving State shall agree to accept the patient.

(d) In the event that the laws of the receiving State establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV.

(a) Whenever, pursuant to the laws of the State in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving State. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending State shall have reason to believe that after-care in another State would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving State to investigate the desirability of affording the patient such after-care in said receiving State, and such investigation shall be made with all immediate speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending State and the appropriate authorities in the receiving State find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving State.

(c) In supervising, treating or caring for a patient on after-care pursuant to the terms of this Article, a receiving State shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

ARTICLE V.

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party State, that State shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the State where found pending disposition in accordance with law.

ARTICLE VI.

The duly accredited officers of any State party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all States party to this compact, without interference.

ARTICLE VII.

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving State shall have the effect of making the person a patient of the institution in the receiving State.

(b) The sending State shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party States may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party State or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party State or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party State and a non-party State

relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII.

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties and responsibilities of any patient's guardian on his behalf or in respect to any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving State may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending State, the court of competent jurisdiction in the sending State shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving State may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending State in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this Article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or with responsibility for the person or property of a patient.

ARTICLE IX.

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of States party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X.

(a) Each party State shall appoint a "compact administrator" who, on behalf of his State, shall act as general coordinator of activities under the compact in his State and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his State either in the capacity of sending or receiving State. The compact administrator or his duly designated representative shall be the official with whom other party States shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party States shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI.

The duly constituted administrative authorities of any two or more party States may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the States concerned shall find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party State of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII.

This compact shall enter into full force and effect as to any State when enacted by it into law and such State shall thereafter be a party thereto with any and all States legally joining therein.

ARTICLE XIII.

(a) A State party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the Governors and compact administrators of all other party States. However, the withdrawal of any State shall not change the status of any patient who has been sent to said State or sent out of said State pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII, paragraph (b), as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV.

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary

to the Constitution of any party, State, or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any State party thereto, the compact shall remain in full force and effect as to the remaining States and in full force and effect as to the state affected as to all severable matters.

ARTICLE XV.

(a) Pursuant to said compact, the commissioner of behavioral health and developmental disabilities, or his delegate, is hereby designated to be the compact administrator. The compact administrator, acting jointly with like officers of other party States, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this State thereunder.

(b) The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other States pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service of this State, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

(c) The compact administrator, using funds appropriated to the Department of Behavioral Health and Developmental Disabilities and the Department of Public Health, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the compact or by any supplementary agreement entered into thereunder.

(d) Duly authenticated copies of this Act shall be transmitted by the Secretary of State of the State of Georgia to the Governor of each State, to the Attorney General and the Administrator of General Services of the United States, and to the Council of State Governments, and to the Veterans' Administration.

(e) The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a

proposed transfer from an institution in this State to an institution in another party State, to take no final action without notice to the admitting court or in case of admission other than by a court, then notice to the admitting medical facility is required.

(f) In the administration of this compact, the compact administrator shall in no way abridge the rights or privileges of any patient to appeal to the courts for a hearing as provided under the laws of Georgia. (Ga. L. 1973, p. 796, § 2; Ga. L. 2009, p. 453, § 3-21/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 775, § 37/HB 942.)

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in subsection (c) of Article XV of the Interstate Compact.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised capitalization in subsection (a) of Article XV of the compact.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Prerequisite to hospitalization of nonstate resident in state institution. — Without a reciprocal agreement between the State of Georgia and the state where the original commitment was effectuated, the only procedure whereby a nonresident person could be hospitalized in a state institution would be by strict compliance with the Georgia Code. 1963-65 Op. Att'y Gen. p. 700.

RESEARCH REFERENCES

ALR. — Extraterritorial effect and recognition of adjudication of competency or incompetency, sanity or insanity, 102 ALR 444.

37-10-3. Applicability of certain enforcement and administrative provision to this chapter.

The provisions of Code Sections 37-1-23, 37-1-41, 37-1-50 through 37-1-53, 37-1-90, and 37-1-100 shall not apply to this chapter. (Code 1981, § 37-10-3; Ga. L. 2011, p. 752, § 37/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "37-1-41" for "37-1-40" in this Code section.

Editor's notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

TITLE 38

MILITARY, EMERGENCY MANAGEMENT, AND VETERANS AFFAIRS

Chap.

1. General Provisions, 38-1-1, 38-1-2.

2. Military Affairs, 38-2-1 through 38-2-577.

3. Emergency Management, 38-3-1 through 38-3-153.

4. Veterans Affairs, 38-4-1 through 38-4-72.

Cross references. — Functions of county, municipal, and other housing authorities pertaining to provision of housing for persons engaged in national defense industries or activities, § 8-3-130 et seq. Special license plates for members of United States military reserve, § 40-2-64. Special license plates for members of Georgia National Guard, § 40-2-65. Prohibition against employment discrimination by state agencies against servicemen's wives, § 45-2-9.

Editor's notes. — By resolution (Ga. L. 1985, p. 561), the General Assembly directed the Department of Defense and the Department of Veterans Service to design and strike the Georgia Medal of Honor.

Law reviews. — For note, "Rethinking the Role and Regulation of Private Military Companies: What the United States and United Kingdom Can Learn from Shared Experiences in the War on Terror," see 39 Ga. J. Int'l & Comp. L. 445 (2011).

CHAPTER 1

GENERAL PROVISIONS

Sec.
38-1-1. Marital, birth, divorce, or death records supplied free to veterans, dependents, Department of Veterans Affairs, or veterans' organizations; requirements; county to pay certain fees.

Sec.
38-1-2. Political subdivisions authorized to furnish quarters, utilities, and services to nationally recognized veterans' organizations.

Cross references. — Custody disputes involving military parents, § 19-9-3.

38-1-1. Marital, birth, divorce, or death records supplied free to veterans, dependents, Department of Veterans Affairs, or veterans' organizations; requirements; county to pay certain fees.

(a) Any agency of this state or any county official obligated to provide copies or other evidence of the marital, birth, divorce, or death status of persons of this state shall furnish veterans, dependents of deceased veterans, the United States Department of Veterans Affairs, or any veterans' organization such copies or other evidence free of charge upon the following conditions:

(1) Where such copies or other evidence is to be used in proceedings for establishing disability or death claims with the United States Department of Veterans Affairs; and

(2) Where the request is made in writing by a veteran, a dependent of a deceased veteran, the legal representative of a veteran, the United States Department of Veterans Affairs, or any veterans' organization.

(b) In any county where the county official referred to in subsection (a) of this Code section is on a fee basis, the official shall be paid the fee for the service by the county. Payments shall be made on a monthly basis from county funds. (Ga. L. 1953, Jan.-Feb. Sess., p. 117, §§ 1, 2; Ga. L. 1956, p. 614, § 1; Ga. L. 1990, p. 45, § 1.)

Cross references. — Vital records generally, T. 31, C. 10.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 3 et seq.

ALR. — Judicial review of decision, on merits, of claim upon public pension fund, 117 ALR 1408.

38-1-2. Political subdivisions authorized to furnish quarters, utilities, and services to nationally recognized veterans' organizations.

Subject to the direction of the public officer or authority in charge of a building, office, or meeting hall, political subdivisions of this state are authorized to furnish free of charge a building, office, and meeting hall for the exclusive use of the several nationally recognized veterans' organizations and their auxiliaries. The several nationally recognized veterans' organizations may have access at all times to such building, office, or meeting hall. Political subdivisions also have the right to furnish heat, light, utilities, furniture, and janitorial service at no cost to the veterans' organizations and their auxiliaries. (Ga. L. 1947, p. 1181, § 1.)

CHAPTER 2

MILITARY AFFAIRS

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38-2-3. Division and composition of militia; membership of unorganized militia.
38-2-4. Persons exempted from militia duty; exception.
38-2-5. Federal call up of militia; Governor's duties; utilization of unorganized militia; effect of unit's absence.
38-2-6. Ordering organized militia into active state service; Governor's duties; local officials' duties; declaration of state of emergency; pay.
38-2-6.1. Request by Governor for members to report for active duty without first having declared an emergency.
38-2-6.2. National Guard Olympic support activities; reciprocal aid agreements or compacts with other states [Repealed].
38-2-7. Declaration of martial rule; area encompassed specifically designated.
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38-2-574. Code sections to be explained to enlisted personnel.
38-2-575. Complaints of wrongs by commanding officers.
38-2-576. Redress of injuries to private property; complaint; investigating board; assessment.
38-2-577. Delegation by Governor.

Cross references. — North Georgia College Military Scholarships and North Georgia College Reserve Officers' Training Corps Grant Program, §§ 20-3-420 et seq. and 20-3-430 et seq. Grants to children of Georgia National Guard members, T. 20, C. 3, A. 7, P. 3, S. 10. Powers of board of trustees of Georgia Military College, § 20-3-546. Absentee voting generally, § 21-2-380 et seq. Constituting of commissioned officers of armed services of United States as ex officio notaries public of state, § 45-17-30.

OPINIONS OF THE ATTORNEY GENERAL

Issuance of regulations superior to local laws. — Adjutant general may issue regulations under Ga. L. 1955, p. 10 which are superior to local laws of the state, but only when the regulations pertain to the powers granted to the adjutant general under the terms of Ga. L. 1955, p. 10. 1954-56 Op. Att'y Gen. p. 558.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 164.

ALR. — Power to declare martial law apart from military occupation or operations, 24 ALR 1183.

ARTICLE 1

STATE MILITIA GENERALLY

Cross references. — Cancelable loan fund for Georgia National Guard Members, § 20-3-374. Dividing of counties into militia districts, T. 36, C. 2.

PART 1

GENERAL PROVISIONS

38-2-1. Short title.

This chapter may be cited as the "Georgia Military Forces Reorganization Act of 1955." (Ga. L. 1955, p. 10, § 2.)

Cross references. — Georgia Military Pension Fund, T. 47, C. 24, A. 1.

38-2-2. Definitions.

As used in this chapter, the term:

(1) "Active military service of the United States" and "in the armed forces of the United States" mean full-time duty in the army, navy, marine corps, air force, or coast guard of the United States.

(2) "Active service" and "active duty" mean military duty in or with a force of the organized militia (not including the inactive National Guard) or in the Military Division, Department of Defense, either in a full-time status or in a part-time status, depending upon the conditions under which the duty is performed.

(3) "Military" and "military and naval" mean army or land, air force or air, and navy or naval.

(4) "Military" or "military or naval" means army or land, air force or air, or navy or naval.

(5) "Military service of the state," as to military personnel, means service in or with a force of the organized militia or in the Military Division, Department of Defense.

(6) "National Guard" means the Georgia National Guard, the composition of which is set forth in Code Section 38-2-3.

(7) "Naval Militia" means the Georgia Naval Militia as may be organized hereafter.

(8) "Officer" or "commissioned officer" includes warrant officers.

(9) "On the active list" means on the rolls of a force of the organized militia, not including the inactive National Guard.

(10) "Organized militia," "all or any part of the organized militia," "organized militia or any part thereof," "any force of the organized militia," and "organized militia or any force thereof" mean, severally, the Army National Guard, the Air National Guard, the Georgia Naval Militia, when organized, and the State Defense Force, when organized, and include any unit, component, element, headquarters, staff, or cadre thereof as well as any member or members. (Ga. L. 1955, p. 10, § 3; Ga. L. 1985, p. 356, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, commas were inserted before and after both instances of "when organized" in paragraph (10).

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, § 1 et seq.

C.J.S. — 6 C.J.S., Armed Services, §§ 341, 345.

38-2-3. Division and composition of militia; membership of unorganized militia.

(a) The militia of the state shall be divided into the organized militia, the state reserve list, the state retired list, and the unorganized militia.

(b) The organized militia shall be composed of:

(1) An Army National Guard and an Air National Guard which forces, together with an inactive National Guard, when such is authorized by the laws of the United States and regulations issued pursuant thereto, shall comprise the Georgia National Guard;

(2) The Georgia Naval Militia whenever such a state force shall be duly organized; and

(3) The State Defense Force whenever such a state force shall be duly organized.

(c) The state reserve list and the state retired list shall include the persons who are lawfully carried thereon and such persons as may be transferred thereto or placed thereon by the Governor in accordance with this chapter.

(d) Subject to such exemptions from military duty as are created by the laws of the United States, the unorganized militia shall consist of all able-bodied male residents of the state between the ages of 17 and 45 who are not serving in any force of the organized militia or who are not on the state reserve list or the state retired list and who are, or who have declared their intention to become, citizens of the United States. (Ga. L. 1916, p. 158, §§ 1, 3, 4; Code 1933, §§ 86-201, 86-209, 86-301, 86-401; Ga. L. 1951, p. 311, § 3; Ga. L. 1955, p. 10, § 4; Ga. L. 1985, p. 356, § 2.)

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, §§ 342, 343.

ALR. — Enlistment or mustering of minors into military service, 137 ALR 1467; 147 ALR 1311; 148 ALR 1388; 149 ALR 1457; 150 ALR 1420; 151 ALR 1455; 151 ALR 1456; 152 ALR 1452; 153 ALR 1420; 153 ALR 1422; 154 ALR 1448; 155 ALR 1451; 155 ALR 1452; 156 ALR 1450; 157 ALR 1449; 157 ALR 1450; 158 ALR 1450.

Constitutionality of statute providing for bounty or pensions for soldiers, 143 ALR 1530.

38-2-4. Persons exempted from militia duty; exception.

Persons within this state who are not citizens thereof and resident aliens shall not be liable to militia duty, except in repelling local invasions or suppressing insurrections. (Laws 1818, Cobb's 1851 Digest, p. 367; Code 1863, § 1598; Code 1868, § 1660; Code 1873, § 1665; Code 1882, § 1665; Civil Code 1895, § 1819; Civil Code 1910, § 2176; Code 1933, § 79-306.)

Cross references. — Rights of citizens of other states while in Georgia generally, § 1-2-9. Rights of aliens while in Georgia generally, § 1-2-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 3B Am. Jur. 2d, Aliens and Citizens, §§ 1649, 1679.

38-2-5. Federal call up of militia; Governor's duties; utilization of unorganized militia; effect of unit's absence.

When the militia of the state is called into federal service under the Constitution and laws of the United States, the Governor shall order out for service the organized militia or such part thereof as may be necessary; and, if the number available is insufficient, the Governor may call for and accept from the unorganized militia as many volunteers as are required for service in the organized militia. During the absence of the organized militia in the service of the United States, their state designations shall not be given to new organizations. (Ga. L. 1955, p. 10, § 6.)

38-2-6. Ordering organized militia into active state service; Governor's duties; local officials' duties; declaration of state of emergency; pay.

(a) The Governor shall have power, in case of invasion, disaster, insurrection, riot, breach of the peace, combination to oppose the enforcement of the law by force or violence, or imminent danger thereof, or other grave emergency, to order all or any part of the organized militia into the active service of the state for such period, to such extent, and in such manner as he may deem necessary. Such power shall include the power to order the organized militia or any part thereof to function under the operational control of the United States army, navy, or air force commander in charge of the defense of any area within the state which is invaded or attacked or is or may be threatened with invasion or attack.

(b) Whenever any judge of a superior, city, or state court, sheriff, or mayor of a municipality shall apprehend the outbreak of insurrection,

riot, breach of the peace, or combination to oppose the enforcement of the law by force or violence within the jurisdiction of which such officer is by law the conservator of the peace, or in the event of disaster or other grave emergency, it shall be the duty of the judge, sheriff, or mayor, when it appears that the unlawful combination or disaster has progressed beyond the control of the civil authorities, to notify the Governor, and the Governor may then, in his discretion, if he deems the apprehension well founded or the disaster or emergency of sufficient magnitude, order into the active service of the state for such period, to such extent, and in such manner as he may deem necessary all or any part of the organized militia.

(c) When the Governor orders into the active service of the state all or any portion of the organized militia as provided in this Code section, he shall declare a state of emergency in such locality and it shall be the duty of the Governor to confirm such declaration and order in writing which shall state the area into which the force of the organized militia has been ordered.

(d) The compensation of all officers and enlisted men while on duty or assembled pursuant to this Code section shall be paid in the manner prescribed by Code Section 38-2-250. (Ga. L. 1916, p. 158, §§ 2, 3; Code 1933, §§ 86-207, 86-1302; Ga. L. 1951, p. 311, § 5; Ga. L. 1955, p. 10, § 7; Ga. L. 1983, p. 884, § 3-27.)

Cross references. — Governor's role as commander-in-chief of state militia, Ga. Const., 1983, Art. V, Sec. II, Para. III. Further provisions regarding emergency powers of Governor, §§ 38-3-22, 38-3-51, 45-12-29 et seq. Further powers of Governor as to calling out of militia, §§ 45-12-27, 45-12-28, 45-12-31.

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, § 31 et seq.

38-2-6.1. Request by Governor for members to report for active duty without first having declared an emergency.

The Governor is authorized and empowered to request individual members of the Georgia National Guard, with their consent, to report for duty into the active service of the state for the performance of any official duty in connection with National Guard activities without first having declared an emergency as provided for in Code Section 38-2-6 or 45-12-30; provided, however, that when requested to report for duty into the active service of the state, members of the organized militia may not be deployed to quell riots, insurrections, or a gross breach of the peace or to maintain order until an emergency has first been declared as provided in Code Section 38-2-6 or 45-12-30. (Code 1981, § 38-2-6.1, enacted by Ga. L. 1994, p. 654, § 1.)

38-2-6.2. National Guard Olympic support activities; reciprocal aid agreements or compacts with other states.

Repealed by Ga. L. 1996, p. 1018, § 1, effective September 1, 1996.

Editor's notes. — This Code section was based on Code 1981, § 38-2-6.2, enacted by Ga. L. 1996, p. 1018, § 1.

38-2-7. Declaration of martial rule; area encompassed specifically designated.

Whenever any portion of the organized militia is employed pursuant to Code Section 38-2-6, the Governor, if in his judgment the maintenance of law and order will thereby be promoted, may declare by proclamation the area in which the troops are serving, or any specified portion thereof, to be under martial rule. The proclamation shall define the area which is under martial rule. (Ga. L. 1955, p. 10, § 8.)

JUDICIAL DECISIONS

Martial law does not deprive state courts of criminal jurisdiction. — Mere existence of martial law in a certain area does not necessarily deprive the state courts of jurisdiction of all crimes committed against the state law in that area. Welch v. State, 53 Ga. App. 255, 185 S.E. 390 (1936).

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 170, 172 et seq.

38-2-8. State reserve list; composition; active duty; length of service computations; applicable rules and regulations.

(a) Any commissioned or warrant officer of the organized militia may be transferred to the state reserve list on his own request, if approved by the adjutant general.

(b) Any commissioned or warrant officer of the organized militia whose assignment becomes excess personnel by reduction, disbandment, or reorganization of a unit or by denial, withdrawal, or termination of his federal recognition or for any other reason, unless transferred to the inactive National Guard, may be relieved from duty or command and may be transferred to the state reserve list.

(c) Any person who has served as a commissioned or warrant officer in the organized militia or in the armed forces of the United States and has been honorably discharged therefrom may be commissioned and placed on the state reserve list in the highest grade previously held by him after complying with such conditions as may be prescribed by regulations issued pursuant to this chapter.

(d) Upon the recommendation of the adjutant general, the Governor may order any person on the state reserve list to active duty in or with the organized militia for a period not to exceed three months, in which case the person shall rank in his grade from the date of such order.

(e) Time spent on the state reserve list shall not be credited in the computation of length of service for seniority, pay, promotion, or otherwise, or retirement or any of the privileges and exemptions pertaining thereto, except that time served on active duty by order of the Governor shall be so credited.

(f) The provisions of this chapter relative to the resignation, retirement, court-martial, dismissal, or discharge of commissioned or warrant officers of the organized militia, including dismissal or discharge on the findings of an efficiency or medical examining board, shall be applicable to commissioned or warrant officers on the state reserve list. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-405; Ga. L. 1955, p. 10, § 14.)

38-2-9. State retired list; officers; enlisted persons; grade upon transfer to list; return to active duty; computation of time.

(a) Any member of the organized militia who has reached the age of 64 years may be retired for the reason of age and transferred to the state retired list by the Governor. A member may be retired for reason of age and transferred to the state retired list by the Governor before reaching 64 years of age in order to conform to the laws and regulations of the United States which are applicable to the organized militia.

(b) Any officer who has served for at least 20 years in the organized militia or in the organized militia and the armed forces of the United States combined, upon his request, may be transferred to the state retired list by the Governor in a grade which is one grade higher than the highest grade previously held by him during such service. In computing the 20 year period, service as an enlisted person shall be counted.

(c) Any warrant officer or enlisted person who has served for at least 20 years in the organized militia or in the organized militia and the armed forces of the United States combined, upon his request, may be transferred to the state retired list by the Governor in a grade equivalent to the highest grade held by him during such service. If the grade was of officer grade, subsection (b) of this Code section will govern.

(d) Upon the recommendation of the adjutant general, the Governor may order any person on the state retired list to return to active duty and serve on military courts or boards, perform staff duty in or with the

organized militia, or, in time of emergency, perform any military duty in or with the organized militia. In any such case, the person so ordered shall rank in his grade at retirement from the date of the order.

(e) Time spent on the state retired list shall not be credited in the computation of length of service for seniority, pay, promotion, or otherwise, or any of the privileges and exemptions pertaining thereto, except that time served on active duty by order of the Governor shall be credited. (Ga. L. 1951, p. 311, § 18; Ga. L. 1955, p. 10, § 15; Ga. L. 2005, p. 213, § 4/SB 258.)

Cross references. — Credit for service in organized militia for purposes of Employees' Retirement System of Georgia, § 47-2-90.

OPINIONS OF THE ATTORNEY GENERAL

Requirement for transfer to retired list at higher grade. — Officer must be a current member of the organized militia in order for the Governor to transfer the officer, upon certain conditions, to the retired list at one grade higher than the highest grade previously held. 1976 Op. Att'y Gen. No. 76-32.

Control requirement for transfer. — Term "transferred" requires that the transferee (officer) be in a present condition or status over which the transferor (Governor) exercises authority or control, and that the transferor have authority or control to some extent over the position or status to which the transferee is transferred. 1976 Op. Att'y Gen. No. 76-32.

38-2-10. Use of National Guard in drug law enforcement, provision of medical care in medically underserved areas, and for youth opportunity training programs.

(a) In addition to any other authority provided by the Constitution and laws of this state, the Governor, as commander-in-chief of the organized militia of this state and in accordance with 32 U.S.C. Section 112, may:

(1) Authorize or direct the Georgia National Guard to assist and support federal, state, and local law enforcement agencies in drug interdiction, counterdrug activities, and drug demand reduction;

(2) Order or direct that properly licensed medical personnel of the Georgia National Guard provide medical care to civilians in medically underserved areas of this state under such terms and conditions as the Governor, in consultation with the commissioner of public health, shall determine appropriate, subject to any applicable laws and regulations of the United States; or

(3) Order or direct that the Georgia National Guard apply for and use federal funds to provide training, education, and other benefits to civilians in accordance with any federal laws or regulations authorizing National Guard participation.

(b)(1) Whenever the Governor assigns duty to the adjutant general under this Code section, the adjutant general shall have the authority:

(A) To provide assistance to federal, state, and local law enforcement agencies upon request, including the use of military equipment and facilities, transportation, surveillance, drug seizure and destruction, language translation, and such other assistance as may be necessary and within the authority of the requesting law enforcement agency; provided, however, that where federal equipment is to be used, the adjutant general shall verify that the federal government has made such equipment available for use by the state; provided, further, that National Guard members involved in such activities are subject to the directions of the requesting law enforcement agency through the National Guard chain of command;

(B) To consult with appropriate state agencies concerning youth opportunity training programs and, in connection therewith, to establish a program utilizing National Guard facilities, the National Guard, and Department of Defense personnel to provide military-based training and other benefits to civilian youth pursuant to agreement with the federal government or otherwise;

(C) To establish a drug demand reduction program in which National Guard personnel and their families participate in programs designed to discourage drug use; and

(D) To provide medical care in medically underserved areas in accordance with directions of the Governor.

(2) To enter into agreements and do all things necessary or incidental to the performance of any such duty authorized in paragraph (1) of this subsection, including the execution of memoranda of agreement for assistance to federal, state, and local law enforcement agencies, the execution of grant agreements with the federal government, and the execution of other contracts and agreements. (Code 1981, § 38-2-10, enacted by Ga. L. 1994, p. 655, § 1; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2011 amendment, effective July 1, 2011, substituted "commissioner of public health" for "commissioner of community health" in paragraph (a)(2).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

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National Guard is eligible to share in proceeds of drug-related forfeitures with respect to statutorily authorized activities. 1995 Op. Att'y Gen. No. 95-29.

38-2-11. Implementation of federally approved counterdrug law enforcement plans.

(a) The Governor may request National Guard assistance, including but not limited to, personnel, supplies, and equipment, from the governor of another state for the purpose of implementing a federally approved counterdrug law enforcement plan under 32 U.S.C. Section 112. Such National Guard personnel from another state while performing duty in this state pursuant to a request made under this Code section shall have the same immunity from liability and prosecution as do National Guard personnel of this state performing such duty.

(b) The Governor may authorize the use of Georgia National Guard personnel and equipment outside the boundaries of the state under this Code section, if:

(1) A request is received from the governor of another state;

(2) The request evidences that the requesting governor has authority to make the request;

(3) The attorney general of the requesting state has acknowledged the Governor's authority and has certified that National Guard personnel requested from this state while performing duty in the requesting state shall have the same immunity from liability and prosecution as do National Guard personnel of the requesting state performing such duty; and

(4) The request relates to the performance of duty in a federally approved counterdrug law enforcement plan as authorized and funded under 32 U.S.C. Section 112. (Code 1981, § 38-2-11, enacted by Ga. L. 1994, p. 655, § 1.)

38-2-12. Use of National Guard as honor guards for veterans' funerals.

Subject to the appropriation by the General Assembly of funds for such purpose, the Governor may authorize or direct Georgia National Guard personnel to serve while on state active duty as honor guard detail for veterans' funerals on appropriate occasions. The adjutant general shall request reimbursement for the pay and allowances due to such members ordered to such duty. (Code 1981, § 38-2-12, enacted by Ga. L. 1998, p. 237, § 1.)

Part 2

Organized Militia

Cross references. — Educational loans to members of Georgia National Guard, § 20-3-374. Purchase of liability insurance and other benefits for members of organized militia serving on state active duty, § 45-9-2.

38-2-20. Land force; Army National Guard.

The land force of the organized militia shall be the Army National Guard and shall comprise the army units which are a part of the Georgia National Guard, including the personnel who are enlisted, appointed, or commissioned therein. All persons who are members of the Army National Guard shall be federally recognized as such. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-401; Ga. L. 1951, p. 311, § 16; Ga. L. 1955, p. 10, § 27.)

38-2-21. Air force; Air National Guard.

The air force of the organized militia shall be the Air National Guard and shall comprise the air units which are a part of the Georgia National Guard, including the personnel who are enlisted, appointed, or commissioned therein. All persons who are members of the Air National Guard shall be federally recognized as such. The army aviation units of the National Guard shall not be considered air units within the meaning of this chapter. (Ga. L. 1955, p. 10, § 28.)

38-2-22. Naval force; Naval Militia.

(a) The naval force of the organized militia shall be the Georgia Naval Militia and shall comprise the units and personnel forming the Naval Militia of the state as may be organized, including the personnel who are enlisted, appointed, or commissioned therein. All persons who shall become members of the Georgia Naval Militia shall be members of the United States naval reserve or the United States marine corps reserve.

(b) Should units of the naval militia be tendered to the state by the United States, the Governor is authorized in his discretion to accept them. (Ga. L. 1916, p. 158, § 4; Code 1933, § 86-301; Ga. L. 1951, p. 311, § 26; Ga. L. 1955, p. 10, § 29.)

38-2-23. State Defense Force.

The State Defense Force, whenever such a state force shall be duly organized under the Constitutions and laws of the United States and of this state, shall be a force of the organized militia. (Ga. L. 1955, p. 10, § 30; Ga. L. 1985, p. 356, § 3.)

38-2-24. Organizational and training guidelines.

The forces of the organized militia shall be organized, armed, disciplined, governed, administered, and trained as prescribed by the

laws of the United States and by this chapter and the regulations issued thereunder. (Ga. L. 1951, p. 311, § 20; Ga. L. 1955, p. 10, § 31.)

38-2-25. Assemblies; annual training; special duty; active duty; declaration of emergency.

(a) Members and units of the organized militia shall assemble for drill or other equivalent training, instruction, or duties during each year and shall participate in field training, encampments, maneuvers, schools, conferences, cruises, or other similar duties each year as may be prescribed by the laws of the United States and by this chapter and the regulations issued thereunder; provided, however, that no assembly of any unit of the organized militia shall be ordered in time of peace for any day during which a state or federal election shall be held, except in case of disaster, riot, invasion, or insurrection, or imminent danger thereof.

(b) Members of the organized militia may be ordered by the Governor or under his authority to perform special duty, including but not limited to duty in a judicial proceeding or court of justice conducted pursuant to Article 5 of this chapter or as a member of or in any other capacity with any military board or as an investigating officer or as a medical examiner.

(c) Members and units of the organized militia may be ordered by the Governor to state active duty when in his judgment there exists a possibility of imminent danger of disaster, riot, insurrection, or gross breach of the peace; provided, however, that, when so called to state active duty, members and units may not be deployed to quell riots, insurrection, or gross breach of the peace or to maintain order until an emergency has first been declared as provided in Code Section 38-2-6 or 45-12-30.

(d) Members of the organized militia, with their consent, may be ordered by the Governor to state active duty for any lawful purpose or purposes and without pay and allowances or other compensation, except as specifically set forth in such orders, but with all other privileges, rights, benefits, and immunities provided by the military laws or other statutes of this state; provided, however, that, when so called to state active duty, members of the organized militia may not be deployed to quell riots, insurrections, or a gross breach of the peace or to maintain order until an emergency has first been declared as provided in Code Section 38-2-6 or 45-12-30. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-801; Ga. L. 1951, p. 311, § 20; Ga. L. 1955, p. 10, § 32; Ga. L. 1969, p. 228, § 1; Ga. L. 1991, p. 1393, § 1.)

38-2-26. Maintenance of armories and training facilities for militia units.

Unless the same shall be furnished by the United States, counties, or municipal corporations, the state shall provide armory accommodations, bases, camps, target ranges, and mooring and other facilities and shall maintain the same for units of the Army National Guard, the Air National Guard, and the Naval Militia allotted to the state under the laws of the United States, accepted by the Governor, and organized under the authority of this chapter. (Ga. L. 1955, p. 10, § 33.)

38-2-27. Organization of militia units to conform to federal regulations; Governor's organizational powers; restrictions on disbanding units.

(a) The Governor shall conform the organization of the Georgia National Guard and the Georgia Naval Militia, including the composition of all units thereof, to the organization of National Guard and Naval Militia units prescribed by the laws of the United States and the regulations issued thereunder.

(b) For the purposes stated in subsection (a) of this Code section, the Governor is authorized:

(1) To organize, reorganize, or disband any unit, headquarters, or staff therein;

(2) To increase or decrease the number of commissioned officers, commissioned warrant officers, warrant officers, petty officers, and noncommissioned officers of any grade therein; and

(3) To increase or decrease the strength of the Georgia National Guard and the Georgia Naval Militia.

(c) Notwithstanding the provisions of subsection (b) of this Code section, no organization of the Georgia National Guard, the members of which shall be entitled to and shall have received compensation under 32 U.S.C. Section 104(f), as amended, shall be disbanded without the consent of the President of the United States; nor, without such consent, shall the commissioned or enlisted strength of any organization in the Georgia National Guard be reduced below the minimum prescribed therefor by the President of the United States. (Ga. L. 1951, p. 311, §§ 4, 17; Ga. L. 1955, p. 10, § 34.)

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Operation of local emergency management unit. — Local unit director is responsible for operation of local emergency management unit during declared

emergency, subject to direction of governing authority of applicable political subdivision. 1982 Op. Att'y Gen. No. 82-19.

38-2-28. Inactive National Guard; composition.

The inactive National Guard shall consist of the persons commissioned, appointed, or enlisted therein, such officers and enlisted men as may be transferred thereto from the Army National Guard and the Air National Guard, and such persons as may be enlisted therein under the laws of the United States and the regulations issued thereunder. (Ga. L. 1955, p. 10, § 35.)

38-2-29. Credit for active federal service.

For all purposes under this chapter, members of the organized militia who enter the active military service of the United States in time of war or under a call, order, or draft by the President or who enter and serve on active duty in the military service of the United States in time of peace and who thereafter return to the military service of the state shall be entitled to credit for time so served as if such service had been rendered to the state. (Ga. L. 1955, p. 10, § 36.)

38-2-30. Resumption of membership in organized militia by National Guard personnel on release from active federal service.

Upon their release from the active service of the United States, commissioned officers, warrant officers, and enlisted personnel of the organized militia who have been in the active military service of the United States under call or order into service shall resume their membership in the organized militia as provided in the laws of the United States, regulations issued pursuant thereto, and regulations issued pursuant to this chapter. (Ga. L. 1955, p. 10, § 37.)

38-2-31. Purchase and issue of military property; emergency purchases; disposal of obsolete property.

(a) Under the direction of the Governor, the adjutant general shall authorize the purchase of such military property as may be required for the use of the organized militia. In extreme emergencies, however, the commanding officer of any force of the organized militia on active service may purchase such necessities as are required for the immediate use and care of his command. A report of such purchases shall be made forthwith to the adjutant general.

(b) No military property shall be issued to persons or organizations other than those belonging to the organized militia and such forces as

may be organized pursuant to Code Section 38-2-70. Obsolete ordnance property of the state, however, may be issued by the adjutant general, with the approval of the Governor, to municipalities and to educational, patriotic, and charitable organizations under such conditions as may be prescribed by regulations issued pursuant to this chapter. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-902, 86-1101, 86-1102; Ga. L. 1951, p. 311, § 22; Ga. L. 1955, p. 10, § 38.)

Cross references. — State purchasing generally, § 50-5-50 et seq.

38-2-32. Responsibility for military property or funds; bond; pay deductions for lost or damaged equipment; action by Attorney General to recover damages.

(a) Military property of the state and of the United States shall be issued, safeguarded, maintained, accounted for, inventoried, inspected, surveyed, and disposed of as provided in applicable laws of the United States, regulations issued thereunder, and regulations issued pursuant to this chapter.

(b) Every officer of the organized militia responsible for military property or funds of the state or of the United States shall give bond with good and sufficient security to the state in such amount as shall be determined and approved by the adjutant general, conditioned upon the safekeeping, proper use and care, and prompt surrender of the property or funds for which the officer may be properly responsible. The premiums for such bonds are to be paid from the funds of the Military Division, Department of Defense.

(c) When military property is lost, damaged, or destroyed through the negligence or fault of a member of the organized militia, the amount determined as the value of the property or the cost of repairing the same may be collected from any pay or allowance due or to become due him from the state.

(d) An action may be maintained in the name of the state in any court having jurisdiction thereof by the Attorney General upon the request of the adjutant general to recover from a member or former member of the organized militia found responsible for military property lost, damaged, or destroyed through his negligence or fault, the amount determined as the value of the property or the cost of repairing the same. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1101, 86-1102, 86-1103; Ga. L. 1955, p. 10, § 39.)

PART 3

STATE DEFENSE FORCE

38-2-50. Creation or disbandment; organization and administration; commander.

The State Defense Force may be created, established, maintained, or disbanded by the Governor at any time when such action is authorized under federal law. It shall be organized, armed, equipped, disciplined, governed, administered, and trained as prescribed by this chapter and the regulations issued thereunder, in conformance with the laws of the United States. Whenever such a state force shall be organized, it shall be commanded by a brigadier general. (Ga. L. 1917, p. 91, § 1; Code 1933, § 86-1501; Ga. L. 1951, p. 311, § 27; Ga. L. 1955, p. 10, §§ 30, 55; Ga. L. 1985, p. 356, § 4.)

Cross references. — Workers' Compensation applicability to the Georgia National Guard and the State Defense Force, § 34-9-1.

38-2-51. Authority of Governor.

(a) In order to conform the organization of the State Defense Force to the organization of such state military forces as may be prescribed by the laws of the United States and regulations issued thereunder, the Governor may organize, activate, increase, change, divide, consolidate, disband, reactivate, or reorganize any unit, headquarters, staff, or cadre of the State Defense Force and may prescribe the composition and types of units, the type of organization, and the system of drill or instruction to be used in training such units.

(b) For the purposes set forth in subsection (a) of this Code section, the Governor is authorized to fix, increase, or decrease the strength of any unit, headquarters, staff, or cadre of the State Defense Force, including the number of commissioned officers, warrant officers, noncommissioned officers, and other enlisted personnel of any grade in any such unit, headquarters, staff, or cadre, and to alter the grades of officers, warrant officers, and noncommissioned officers. (Ga. L. 1917, p. 91, § 2; Code 1933, § 86-1502; Ga. L. 1951, p. 311, § 27; Ga. L. 1955, p. 10, § 56; Ga. L. 1985, p. 356, § 5.)

Cross references. — Georgia Military Pension Fund, T. 47, C. 24, A. 1.

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 342.

38-2-52. Detail of officers from retired and reserve lists and National Guard to State Defense Force.

(a) Upon the recommendation of the adjutant general, the Governor may order any officer on the state reserve list or on the state retired list to active duty with the State Defense Force, in which case the officer shall rank in his grade from the date of the order. The officer may be relieved from active duty and may be returned to the reserve list or retired list in the discretion of the Governor.

(b) Upon the recommendation of the adjutant general, the Governor may detail in his grade any commissioned or warrant officer in the Georgia National Guard, in addition to his other duties, to duty with the State Defense Force or any unit, headquarters, staff, or cadre thereof; and the officer may be relieved from such detail in the discretion of the Governor. (Ga. L. 1951, p. 311, § 28; Ga. L. 1955, p. 10, § 57; Ga. L. 1985, p. 356, § 6.)

38-2-53. Detail of National Guard enlisted personnel to State Defense Force.

Enlisted persons of the Georgia National Guard may be detailed by the adjutant general to duty with the State Defense Force or any unit, headquarters, staff, or cadre thereof; and such persons may be relieved from such detail in the discretion of the adjutant general. (Ga. L. 1951, p. 311, § 29; Ga. L. 1955, p. 10, § 58; Ga. L. 1985, p. 356, § 7.)

38-2-54. Duties, privileges, and immunities.

All duties imposed by the military law or other statutes of the state or by regulations issued thereunder upon units, commissioned officers, warrant officers, and enlisted personnel of the organized militia are imposed upon the units, commissioned officers, warrant officers, and enlisted personnel, respectively, of the State Defense Force. All rights, privileges, and immunities conferred by the military law or other statutes of the state or by regulations issued thereunder upon the units, commissioned officers, warrant officers, and enlisted personnel of the Georgia National Guard or of the organized militia are conferred upon the units, commissioned officers, warrant officers, and enlisted personnel, respectively, of the State Defense Force except as otherwise prescribed in this chapter; provided, however, that the provisions of Code Sections 38-2-279 and 38-2-280 shall not be applicable to personnel of the State Defense Force. Such rights, privileges, and immunities include relief from civil or criminal liability for acts done while on duty; rights to pay, allowances, and other compensation; expenses and subsistence; arms, uniforms, and equipment; provision, maintenance,

use, and control of armories; eligibility to appointment on the military staff of the Governor; exemption from civil process and from jury duty; right of way; right to wear the uniform and to parade with firearms; and all other rights, privileges, and immunities created by statute or custom not hereinbefore specifically enumerated. (Ga. L. 1951, p. 311, §§ 34, 38, 39, 42; Ga. L. 1955, p. 10, § 59; Ga. L. 1985, p. 356, § 8; Ga. L. 2002, p. 1160, § 1.)

Cross references. — Privilege from arrest of active duty military personnel, § 17-4-2. Rights and privileges of members of organized militia, § 38-2-270 et seq.

RESEARCH REFERENCES

ALR. — Official immunity of state national guard members, 52 ALR4th 1095.

38-2-55. Use and operation of state property.

Serving members of the State Defense Force are authorized to use and operate state property of the Georgia Department of Defense and other state agencies, including without limitation vehicles, as may be necessary for the accomplishment of training and fulfillment of assigned missions; provided, however, that the use of such property shall not be allowed if such use will interfere with the function and training of the National Guard or any state agency. (Code 1981, § 38-2-55, enacted by Ga. L. 2003, p. 606, § 1.)

Part 4

Unorganized Militia

38-2-70. Organizations from unorganized militia; applicable regulations; enlistment and volunteers.

To the extent permitted by the Constitution and laws of the United States, the Governor may:

(1) Order into active state service, recognize existing, or authorize the establishment of organizations of the unorganized militia, of designated classes thereof, or of volunteers therefor, as he may deem to be for the public interest;

(2) Prescribe for those organizations enumerated in paragraph (1) of this Code section such parts of the regulations governing the organized militia as may be applicable thereto or establish such regulations therefor, or both, as he may deem proper; and

(3) Provide for the separate organization of the unorganized militia and authorize the enlistment in such organizations of persons

volunteering for such service who are not otherwise subject to military duty under Code Section 38-2-3. (Ga. L. 1916, p. 158, § 2; Code 1933, §§ 86-206, 86-210; Ga. L. 1955, p. 10, § 9.)

38-2-71. Registration of members of unorganized militia.

Whenever he shall deem it necessary, the Governor may direct the members of the unorganized militia to present themselves for and submit to registration at such time and place and in such manner as may be prescribed by regulations issued pursuant to Code Section 38-2-110. (Ga. L. 1916, p. 158, § 2; Code 1933, § 86-202; Ga. L. 1955, p. 10, § 5.)

38-2-72. Volunteers or draftees from unorganized militia serving in organized militia; draft of unorganized militia; compensation and duration of duty.

(a) Whenever it is necessary in case of invasion, disaster, insurrection, riot, breach of the peace, or combination to oppose the enforcement of the law by force or violence, or imminent danger thereof, or whenever it is necessary to maintain the organized militia or any force thereof at the number required for public safety or prescribed by the laws of the United States, the Governor may call for and accept from the unorganized militia as many volunteers as are required for service in the organized militia or he may direct the members of the unorganized militia or such of them as may be necessary to be drafted into the organized militia or any force thereof.

(b) Whenever it is necessary in time of war or in case of invasion, disaster, or other like emergency, or imminent danger thereof, the Governor may direct the members of the unorganized militia or such of them as may be necessary to be drafted under such regulations as he may prescribe into the active service of the state and to serve as directed by him.

(c) Whenever members of the unorganized militia are drafted into the active service of the state, they shall serve for such period as the Governor may direct, not to exceed the duration of the emergency for which they may be drafted. The compensation of all members of the unorganized militia, while on duty or assembled pursuant to this Code section, shall be paid in the manner prescribed by Code Section 38-2-250. (Ga. L. 1916, p. 158, § 2; Code 1933, § 86-205; Ga. L. 1951, p. 311, §§ 11, 12; Ga. L. 1955, p. 10, § 10.)

Cross references. — Emergency powers of Governor generally, §§ 38-3-22, 38-3-51, 45-12-29 et seq.

38-2-73. Failure to appear for registration or draft; penalty.

(a) It shall be unlawful for any member of the unorganized militia who is ordered to register or to be drafted under Code Sections 38-2-71 and 38-2-72 to fail to appear at the time and place designated in such order.

(b) Any person who commits the offense described in subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1916, p. 158, § 2; Code 1933, § 86-208; Ga. L. 1951, p. 311, § 15; Ga. L. 1955, p. 10, §§ 11, 106.)

Part 5

Military Relations with Other States

38-2-90. Service outside state; application of state military law to such service.

(a) The Governor may order the organized militia or any part thereof to serve outside the borders of the state or of the United States in order to perform military duty of every description; to participate in parades, reviews, cruises, conferences, encampments, maneuvers, or other training; to participate in small arms and other military competitions; and to attend service schools.

(b) This chapter shall apply to the members of the organized militia while serving outside the state and while going to and returning from such service outside the state in like manner and to the same extent as while serving within the state. (Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, § 16.)

38-2-91. Rendering assistance to another state's armed forces; Governor's request and recall; requesting assistance for this state.

(a) Upon the request of the governor of another state, the Governor in his discretion may order all or any portion of the organized militia to assist the military or police forces of the other state who are actually engaged in defending the other state. Such forces may be recalled by the Governor at his discretion.

(b) The Governor in his discretion may request the governor of another state to order all or any portion of the organized militia of the other state to assist the military or police forces of this state who are actually engaged in defending this state. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1411, 86-1412; Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, §§ 17, 18.)

38-2-92. Fresh pursuit into or beyond state; surrender; surrender not waiver of extradition.

(a) Any organization, unit, or detachment of the organized militia, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces beyond the borders of this state into another state until they are apprehended or captured by the militia organization, unit, or detachment or until the military forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided, however, that the other state shall have given authority by law for the pursuit by the forces of this state. Any such persons who shall be apprehended or captured in the other state by an organization, unit, or detachment of the forces of this state shall, without unnecessary delay, be surrendered to the military or police forces of the state in which they are taken or to the United States; but the surrender shall not constitute a waiver by this state of its right to extradite or prosecute the persons for any crime committed in this state.

(b) Any military forces or organization, unit, or detachment thereof of another state which is in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons and are authorized to arrest or capture the persons within this state while in fresh pursuit. Any such persons who shall be captured or arrested by the military forces of the other state while in this state shall, without unnecessary delay, be surrendered to the military or police forces of this state to be dealt with according to law. This Code section shall not be construed so as to make lawful any arrest in this state which would otherwise be unlawful. (Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, §§ 17, 18.)

38-2-93. Compacts for military aid authorized.

(a) The Governor is authorized to enter into, amend, supplement, and implement agreements or compacts with the executive authorities of other states providing for mutual military aid and matters incidental thereto, in case of invasion or other hostile action, disaster, insurrection, or imminent danger thereof.

(b) The agreements or compacts may include but shall not be limited to provisions for joint military action against a common enemy; for the protection of bridges, tunnels, ferries, pipelines, communication facilities, and other vital installations, plants, and facilities; for the military support of emergency management agencies; for the fresh pursuit, by

the organized militia or military forces or any part thereof of a state into the jurisdiction of any other state, of persons acting or appearing to act in the interest of an enemy government or seeking or appearing to seek to overthrow unlawfully the government of the United States or any state; for the powers, duties, rights, privileges, and immunities of the members of the organized militia or military forces of any state while so engaged outside their own jurisdiction; for such other matters as are of military nature, or incidental thereto, and which the Governor may deem necessary or proper to promote the health, safety, defense, and welfare of the people of this state; and for the allocation of all costs and expenses arising from the planning and operation of the agreements or compacts. (Ga. L. 1955, p. 10, § 19.)

Cross references. — Cooperation with other states generally, T. 28, C. 6.

ARTICLE 2

MILITARY ADMINISTRATION

Part 1

Commander in Chief and Staff

38-2-110. Governor as militia commander in chief; issuance and effect of regulations.

The Governor shall be the commander in chief of the militia of the state. The Governor is authorized to issue regulations for the government of the militia. Regulations issued by the Governor shall have the same force and effect as this chapter, but they shall conform to the laws and regulations of the United States relating to the organization, discipline, and training of the militia; to this chapter; and, as nearly as practicable, to the laws and regulations governing the army, navy, and air force of the United States. The rules and regulations in force on February 2, 1955, not inconsistent with this chapter, shall remain in force until new rules and regulations are approved and promulgated. (Ga. L. 1916, p. 158, § 1; Code 1933, §§ 86-101, 86-102; Ga. L. 1951, p. 311, § 4; Ga. L. 1955, p. 10, § 5.)

Cross references. — Commander in chief, Ga. Const., 1983, Art. V, Sec. II, Para. III.

OPINIONS OF THE ATTORNEY GENERAL

Adjutant General's authority includes the power to control the activities of the State Defense Force to prescribe such officers as may be proper, and to plan

and provide for training of the State Defense Force in a manner consistent with the law and regulations prescribed by the Governor. If the Governor directs, the Adjutant General may also prescribe regulations, but the Governor does not have authority to appoint commissioned officers. 1992 Op. Att'y Gen. No. 92-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, §§ 31, 32.

C.J.S. — 6 C.J.S., Armed Services, § 342.

38-2-111. Personal aides-de-camp; appointment; commissions; length of service; duties.

The Governor's personal staff shall consist of one chief of aides-de-camp, with rank of brigadier general; two assistant chiefs of aides-de-camp, with rank of colonel; all other aides-de-camp shall be appointed with the rank of lieutenant colonel. The selection of aides-de-camp shall be without regard to previous military service, sex, or age limit; and the commissions of all of these officers shall expire with the expiration of the term of the Governor making the appointment. All appointments will be in either the army or air force. Officers of the National Guard shall be eligible to appointment to any of the ranks or the offices of aide-de-camp provided for, but such appointments shall not vacate or affect their status as commissioned officers in the National Guard in which they are serving. The aides-de-camp shall perform such personal and ceremonial duties pertaining to their office as may be required of them by the Governor. (Ga. L. 1916, p. 158, § 1; Ga. L. 1921, p. 195, § 1; Ga. L. 1931, p. 198, § 1; Code 1933, §§ 86-103, 86-104; Ga. L. 1951, p. 311, § 4; Ga. L. 1955, p. 10, § 12; Ga. L. 1963, p. 10, § 1.)

38-2-112. Naval advisor and aide-de-camp; requirements; length of service.

The Governor shall appoint a naval advisor and aide-de-camp, with the rank of captain. No person shall be eligible to hold the office of naval advisor unless he has held a commission in the United States naval service of the rank of lieutenant commander or above and has served not less than two years therein. The naval advisor shall perform such services and duties as the Governor may require, and his commission shall expire with the expiration of the term of the Governor making the appointment. (Ga. L. 1916, p. 158, § 1; Ga. L. 1921, p. 195, § 1; Ga. L. 1931, p. 198, § 1; Code 1933, §§ 86-103, 86-104; Ga. L. 1951, p. 311, § 26; Ga. L. 1955, p. 10, § 13.)

PART 2

DEPARTMENT OF DEFENSE

38-2-130. Creation; executive head; definition.

There shall be an agency of the state government to be known as the Department of Defense of the State of Georgia which shall be composed of the military agency as provided in the laws of this state. The adjutant general shall be the executive head of the Department of Defense. (Ga. L. 1951, p. 311, § 6; Ga. L. 1955, p. 10, § 20; Ga. L. 1972, p. 1015, § 901; Ga. L. 1992, p. 1258, § 1.)

Cross references. — Creation of Emergency Management Division, Department of Defense, § 38-3-20.

OPINIONS OF THE ATTORNEY GENERAL

Authority of Adjutant General. — State Defense Force is subject to the direct authority of the Adjutant General as executive head of the Department of Defense. 1992 Op. Att'y Gen. No. 92-2.

38-2-131. Military division authorized; executive head; definition.

There shall be within the Department of Defense, as a division thereof, a state military agency which shall be styled and known as the "Military Division, Department of Defense" with the adjutant general as the executive head thereof. (Ga. L. 1951, p. 311, § 7; Ga. L. 1955, p. 10, § 21; Ga. L. 1982, p. 3, § 38.)

OPINIONS OF THE ATTORNEY GENERAL

Authority of Adjutant General. — State Defense Force is subject to the direct authority of the Adjutant General as executive head of the Department of Defense. 1992 Op. Att'y Gen. No. 92-2.

38-2-132. Administration of militia and Department of Defense; personnel; State Personnel Board.

The militia of the state shall be commanded and its affairs administered pursuant to law by the Governor, as commander in chief, through the Department of Defense and the military division thereof which shall consist of the adjutant general, two assistant adjutants general, and such other officers, enlisted personnel, and civilian employees as the adjutant general shall from time to time prescribe; provided, however, that nothing in this Code section shall be construed to prejudice the status under the rules of the State Personnel Board of any

person employed in the Military Division, Department of Defense. Such other officers, enlisted personnel, and civilian employees shall perform such duties as may be required by the adjutant general who shall fix their compensation subject to the rules of the State Personnel Board. (Ga. L. 1951, p. 311, § 8; Ga. L. 1955, p. 10, § 22; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-60/HB 642.)

The 2012 amendment, effective July 1, 2012, in this Code section, substituted "in this Code section" for "herein" and substituted "rules of the State Personnel Board" for "State Personnel Administration" in two places.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Part 3

Adjutant General and Other Executives

38-2-150. Adjutant general — Eligibility; appointment; compensation; bond.

There shall be an adjutant general of the state who shall be appointed by the Governor for a term concurrent with the term of the Governor appointing such person and who shall serve as such at the pleasure of the Governor. The adjutant general shall have not less than the rank of a major general, the specific rank to be determined by the Governor. The adjutant general shall not be less than 30 nor more than 65 years of age. No person shall be eligible to hold the office of adjutant general unless he or she holds or has held a commission of at least the rank of field grade or the equivalent in the organized militia of the state, in the armed forces of the United States, or in a reserve component thereof and shall have served not less than five years in one or more of such services at the time of his or her appointment. The adjutant general shall receive the pay and allowances for his or her rank as provided by law for an officer of equivalent rank in the regular armed forces of the United States. The Governor shall require the adjutant general to give bond to the state, conditioned on the faithful discharge of the duties of the office, in the sum of $10,000.00 with good and sufficient security, to be approved by the Governor. Notwithstanding any other provisions of law, the adjutant general shall not be subject to the provisions of subsection (e) of Code Section 38-2-279, relating to pay for 18 days' absence and emergency pay. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-501; Ga. L. 1935, p. 95, § 1; Ga. L. 1951, p. 311, § 9; Ga. L. 1955,

p. 10, § 23; Ga. L. 1963, p. 10, § 2; Ga. L. 1967, p. 11, § 1; Ga. L. 1970, p. 299, § 1; Ga. L. 1972, p. 1015, § 902; Ga. L. 2001, p. 26, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Attempted appointment does not affect State Guard position. — Attempted appointment to the position of adjutant general, to which the appointee was ineligible for reasons of age, would not have the effect of removing the appointee from the appointee's position in the Georgia State Guard. 1945-47 Op. Att'y Gen. p. 517 (decided under former Code 1933, § 86-501).

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 344.

38-2-151. Adjutant general — Duties; records; seal; effect of seal on documentary evidence.

(a) The adjutant general shall be chief of staff to the Governor and subordinate only to the Governor in matters pertaining to the Department of Defense and the military and naval affairs of the state.

(b) Whenever the Governor and those who would act in succession to him under the Constitution and laws of the state are unable to perform the duties of commander in chief, the adjutant general shall command the militia.

(c) It shall be the duty of the adjutant general:

(1) To direct the planning and employment of the forces of the organized militia in carrying out their state military mission;

(2) To establish unified command of state forces whenever they are jointly engaged; and

(3) To coordinate the military and naval affairs with the emergency management agency of the state.

(d) The adjutant general shall:

(1) Be custodian of all military records and shall keep the same indexed and available for ready reference;

(2) Keep an itemized account of all moneys received and disbursed from all sources;

(3) Make an annual report to the Governor on the condition of the organized militia with a roster of all commissioned officers and such other matters relating to the Military Division, Department of Defense as he shall deem expedient; and

(4) Cause the laws and regulations relating to the militia to be indexed, printed, bound, and distributed to all forces of the organized militia.

(e) The adjutant general shall further perform such duties pertaining to his office as from time to time may be provided by the laws, rules, and regulations of the United States and such as may be designated by the Governor.

(f) The adjutant general shall have a seal of office approved by the Governor, and all copies and papers in the Military Division, Department of Defense which are duly certified and authenticated under the seal shall be evidence in like manner as if the original were produced. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-501; Ga. L. 1935, p. 95, § 1; Ga. L. 1951, p. 311, § 9; Ga. L. 1955, p. 10, § 24.)

Cross references. — Authority of adjutant general to empower service contract security guards employed by Department of Defense to arrest summarily persons violating laws at or near facilities of Georgia Air National Guard and Georgia Army National Guard, § 50-16-15.

JUDICIAL DECISIONS

Negligent acts of adjutant general. — Trial court erred in denying the state defense agency's motion for summary judgment on the civilian technician's claim that the negligent acts of the state adjutant general while the civilian technician was repairing federal equipment at a federal Air Force base caused the civilian technician's injury as the state adjutant general relationship with the federally-employed civilian technician was clearly military in nature and, thus, the state defense agency was protected by the doctrine of intra-military immunity. Ga. DOD v. Johnson, 262 Ga. App. 475, 585 S.E.2d 907 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Adjutant general is vested with full control and authority over the affairs and employees of the Military Division, Department of Defense of the State of Georgia, and the adjutant general has full authority to enter into an agreement with the United States Department of Defense. 1963-65 Op. Att'y Gen. p. 619.

Adjutant general may issue regulations which are superior to local laws of the state, but only when the regulations pertain to the powers granted to the adjutant general under the terms of former Code 1933, § 86-501. 1954-56 Op. Att'y Gen. p. 558.

Delegation of power or authority. — Adjutant general cannot delegate discretionary power or authority regarding the signing of state contracts but the adjutant general can implement guidelines regarding routine contracts and then, in writing, delegate to the Director of Strategic Resource Management the ministerial function of signing contracts within the guidelines. 1999 Op. Att'y Gen. No. 99-9.

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 344.

38-2-152. Assistant adjutants general; eligibility; appointment; duties; compensation; tenure.

(a) The Governor shall appoint an assistant adjutant general for army and an assistant adjutant general for air to assist the adjutant general in the discharge and performance of his or her duties. Each of the assistant adjutants general, at the time of appointment, shall be a federally recognized officer with the rank of lieutenant colonel or higher. An officer who has retired or resigned from the Georgia National Guard or any other component of the Army or Air Force shall be eligible for appointment as assistant adjutant general for army or air; provided, however, that the officer shall have served in a federally recognized status in the active Army or Air National Guard or any other component of the Army or Air Force, as appropriate, and attained the rank of lieutenant colonel or higher; and provided, further, that the appointment of the officer shall be within five years after the date of his or her retirement or resignation and prior to his or her attaining age 60. Each of the assistant adjutants general shall have the rank of not less than brigadier general, the specific rank to be determined by the Governor. Each of the officers shall receive the pay and allowances for his or her rank as provided by law for an officer of equivalent rank in the regular armed forces of the United States. In the event of a vacancy in the office of the adjutant general, and until his or her successor is appointed and qualified as provided by law, the assistant adjutant general who is senior in rank shall perform the duties required of the adjutant general in connection with the military division, as provided by law. Assistant adjutants general shall hold no other state office, and they shall serve at the pleasure of the Governor.

(b) The adjutant general may appoint, designate, or detail officers of the National Guard as deputy assistant adjutants general for army and for air who shall perform the military duties assigned by the adjutant general. Deputy assistant adjutants general shall be of field grade or general officer rank, the specific rank to be determined by the adjutant general. Deputy assistant adjutants general shall serve at the pleasure of the adjutant general. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-501; Ga. L. 1935, p. 95, § 1; Ga. L. 1951, p. 311, § 9; Ga. L. 1955, p. 10, § 25; Ga. L. 1963, p. 10, § 3; Ga. L. 1970, p. 299, § 2; Ga. L. 1971, p. 84, § 1; Ga. L. 1992, p. 1258, § 2; Ga. L. 2001, p. 26, § 2; Ga. L. 2004, p. 105, § 1; Ga. L. 2012, p. 52, § 1/HB 800.)

The 2012 amendment, effective April 11, 2012, in subsection (a), deleted "with not less than five years of continuous service in the Army or Air National Guard of this state" following "or higher" at the end of the second sentence, and, in the third sentence, twice inserted "or any other component of the Army or Air Force" and deleted "not less than five years" following "shall have served" in the middle.

OPINIONS OF THE ATTORNEY GENERAL

Assistant adjutants general not covered by merit system. — Legislative intent of this section is that assistant adjutants general should not be covered under the state merit system. 1971 Op. Att'y Gen. No. 71-71.

Positions of assistant adjutant general for army, assistant adjutant general for air, and deputy director for civil defense (now emergency management), being specifically excluded by law from the classified service, are not counted against the five discretionary positions which the adjutant general may designate for inclusion in the unclassified service. 1975 Op. Att'y Gen. No. 75-81.

Assistant adjutant general for air is not required by orders to perform hazardous duty and is not entitled to a salary equivalent to the pay and allowances of a brigadier general who also receives incentive pay. 1972 Op. Att'y Gen. No. 72-10.

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 344.

38-2-153. State property and fiscal officer; appointment; duties; reports; bonds; compensation.

The adjutant general may appoint, designate, or detail, subject to the approval of the Governor, a person as the state property and fiscal officer, who shall, under the authority of the adjutant general, have charge of, issue, and be accountable for all state military property and shall make such property returns and reports of the same as the adjutant general may direct. He or she shall be under bond to the state for such amount as the Governor may deem necessary. The adjutant general shall fix the compensation of the state property and fiscal officer. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-502; Ga. L. 1951, p. 311, § 9; Ga. L. 1955, p. 10, § 26; Ga. L. 1996, p. 740, § 1.)

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 344.

PART 4

APPROPRIATIONS, FINANCE, AND ACQUISITION OF PROPERTY

38-2-170. Military appropriations; military fund created; use of military funds.

The General Assembly shall appropriate from time to time a sufficient sum of money, based on estimates and recommendations made by the adjutant general and approved by the Governor, for the purpose of paying the expenses incident to carrying out this chapter. All money so appropriated by the General Assembly shall continue and be kept in the

state treasury as a separate fund to be known as the "military fund." None of the moneys placed in the military fund shall be converted into the general fund of the state treasury, and no part of the military fund shall be used for any purpose except as shall be authorized by law. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-901; Ga. L. 1951, p. 311, § 10; Ga. L. 1955, p. 10, § 62.)

OPINIONS OF THE ATTORNEY GENERAL

Military fund to be used for military purposes only. — Statute clearly provides that all moneys appropriated to the military fund shall be used for military purposes only, and does not provide for the establishment of a canteen service. 1945-47 Op. Att'y Gen. p. 53 (rendered under former Code 1933.

Lapse of appropriations. — Appropriations of state funds to the Department of Defense which are not spent or contractually committed in writing lapse at the end of the fiscal year notwithstanding the provision for a continuing "military fund" in O.C.G.A. § 38-2-170. 1994 Op. Att'y Gen. No. 94-22.

38-2-171. Appropriations for units of organized militia; apportionment by adjutant general.

Out of the funds appropriated for the military fund the adjutant general, in his discretion, may allocate to the units of the organized militia moneys for rental, maintenance, and utility expense of unit facilities and for the welfare of the members of the units. The expenditure of the funds shall be in accordance with regulations issued pursuant to this chapter. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-904; Ga. L. 1951, p. 311, § 21; Ga. L. 1955, p. 10, § 63.)

OPINIONS OF THE ATTORNEY GENERAL

Funds may be allocated only to units of the organized militia and not to an officer-in-charge of such a unit or several units. 1967 Op. Att'y Gen. No. 67-233.

Funds may be allocated to several units jointly. — Funds may, however, be allocated to several units jointly where the units occupy the same facilities with the same officer-in-charge designated as custodian. 1967 Op. Att'y Gen. No. 67-233.

38-2-172. Transfer of funds in emergency; funds used in event of invasion.

(a) When the available funds are not sufficient for the purpose of paying the expenses incident to carrying out this chapter, the Governor may transfer from any available fund in the state treasury such sum as may be necessary to meet such emergency, and the moneys so transferred shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

(b) In the event of invasion of the state by land, sea, or air, the funds referred to in Article III, Section IX, Paragraph VI(b) of the Constitution of this state may be utilized on the executive order of the Governor for defense purposes. (Ga. L. 1951, p. 311, § 10; Ga. L. 1955, p. 10, § 64; Ga. L. 1983, p. 3, § 59.)

38-2-173. Governor authorized to borrow money.

When there is no state appropriation or funds available for the purpose of paying the expenses incident to carrying out the provisions of this chapter having reference to repelling an invasion, suppressing an insurrection, or defending the state in time of war, as authorized by Article VII, Section IV, Paragraphs I and VI of the Constitution of this state, the Governor may borrow money for such purpose in such sum or sums as may from time to time be required; and any such loans so obtained shall be promptly repaid out of the first funds that become available for such use. (Ga. L. 1951, p. 311, § 10; Ga. L. 1955, p. 10, § 65; Ga. L. 1983, p. 3, § 59.)

38-2-174. Governor authorized to accept donations for organized militia.

The Governor, in his discretion, may accept donations of money and property, both real and personal, to be used for military purposes by the organized militia under such conditions as the donor may designate. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1410; Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, § 104.)

38-2-175. Governor authorized to obtain all federal appropriations, property, and equipment.

The Governor may initiate and take such action as he may deem proper to obtain all appropriations, property, and equipment as may be provided by the United States for the use, training, equipping, or benefit of the organized militia. (Ga. L. 1951, p. 311, § 4; Ga. L. 1955, p. 10, § 66.)

38-2-176. Appropriations of money or property by counties or municipal corporations for local military units.

The governing authorities of the counties and municipal corporations of the state are authorized to make appropriations from the funds of such counties and municipal corporations and to donate property, both real and personal, of the counties and municipal corporations for the support and maintenance of local forces of the organized militia as, in their discretion, they may deem meet and proper. A force of the

organized militia shall be deemed to be a local force although its headquarters may be located in a county adjoining the county or adjoining the county in which the municipal corporation may be located, the governing authority of which desires to make any such appropriations, provided that a substantial number of its personnel are residents of such county or municipal corporation. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-905; Ga. L. 1951, p. 311, § 21; Ga. L. 1955, p. 10, § 67.)

OPINIONS OF THE ATTORNEY GENERAL

Municipalities may legally donate money to the state for the purpose of constructing or purchasing military armories for use by local military units. 1952-53 Op. Att'y Gen. p. 415.

Counties and municipalities of this state are authorized to make appropriations and to donate property for the support and maintenance of local National Guard organizations throughout the state. 1973 Op. Att'y Gen. No. 73-15.

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, § 34.

38-2-177. Establishment of defense finance and accounting services facility; steps toward establishment; intergovernmental cooperation.

(a) The General Assembly finds and declares that great public benefit shall result from cooperation among the United States, the state, the counties and municipal corporations of the state, and public authorities with respect to the national, state, and local defense. In particular, such benefit will result from competing and contracting for the establishment of a Defense Finance and Accounting Services facility in Georgia pursuant to the Opportunity for Economic Growth program of the United States Department of Defense and the Base Closure and Realignment Commission proceedings of the United States. Such benefits will include enhanced performance of defense functions, increased job opportunities, increased opportunity for job training and creating a skilled work force, enhanced economic activity, and increased governmental revenues. Pursuant to that finding and declaration, it is further declared to be a significant and important public purpose for the state and local governments to enter into such competition and agreements on such terms and conditions as they may determine in accord with the following:

(1) The Department of Defense is authorized to acquire, by purchase, gift, condemnation, or otherwise, construct, establish, operate, maintain, repair, and replace a finance and accounting facility for defense purposes;

(2) In connection therewith, with the approval of the Governor, the Department of Defense may compete and contract for the establishment of a Defense Finance and Accounting Services facility in Georgia pursuant to the Opportunity for Economic Growth program of the United States Department of Defense and the Base Closure and Realignment Commission proceedings of the United States;

(3) In connection therewith, the department may enter into contracts with the United States, not exceeding 50 years in term, by which the state agrees to make services and facilities available to the United States for purposes of the national defense, or by which the United States makes services and facilities available to the state or its authorities for purposes of the state or national defense; and

(4) In connection therewith, any other state agency or instrumentality shall be authorized to participate with the department or separately for the purpose of providing or receiving services or facilities consistent with its public functions.

(b) In consideration of the mutual public purposes and pursuant to intergovernmental contract, the governing authorities of the counties, municipal corporations, and local authorities of the state are authorized to make appropriations from the funds of such counties, municipal corporations, and local authorities and are authorized to lease, lend, sell, grant, or donate services and property, both real and personal, of the counties and municipal corporations to the state and the federal government for purposes of local, state, and national defense and for the use of the organized militia. For such purposes they may exercise the power of eminent domain. Any donation of real property to the state by a county, municipal corporation, or local authority, with a provision in such a gift that the property shall be used for military purposes and should the property not be used for military purposes the same shall revert to the donor, shall be a valid gift; and if the property can be used by the state for military purposes it may be accepted by the Governor with such conditions and reverter, but the Governor may require the conveyance of a full fee and that likewise shall be a valid conveyance. When so accepted it shall be lawful to expend funds appropriated or otherwise authorized, including proceeds of general obligation debt, for the support of the militia to improve the property with an armory or other military facilities. (Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, § 68; Ga. L. 1993, p. 1, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, § 34.

PART 5

ARMORIES AND OTHER FACILITIES

OPINIONS OF THE ATTORNEY GENERAL

Adjutant general is not bound by the adjutant general's invitation to bid on a state contract, but can accept any bid which the adjutant general considers best for the state. 1954-56 Op. Att'y Gen. p. 633.

38-2-190. Definitions.

As used in this part, the term:

(1) "Armory" means any building, buildings, aircraft hangars, offices, quarters, or other facilities and real property provided for and devoted to the training and housing of the organized militia.

(2) "Maintenance facilities" means shops, centers, and other facilities, including storage facilities located within such maintenance facilities, except minor maintenance facilities located within the armories proper, which are utilized for the purpose of maintaining and repairing federal or state property.

(3) "Range" means all outdoor areas including buildings and other facilities thereon owned, leased, or otherwise operated by the state for training and competition of the organized militia in weapons firing but shall not include small bore ranges installed within armories or other facilities.

(4) "Storage facilities" means all buildings, warehouses, depots, and other facilities utilized wholly for storage of federal or state property but shall not include unit supply facilities located within armories nor storage facilities in maintenance facilities. (Ga. L. 1955, p. 10, § 69.)

38-2-191. Construction, conversion, expansion, or alteration of armories and other facilities authorized when adjutant general deems necessary.

The adjutant general, whenever he shall deem it necessary, subject to the approval of the Governor and provided funds have been appropriated and provided by the state, or by the United States, or by counties, or by municipalities in whole or jointly is authorized to construct, reconstruct, expand, convert, and alter all such facilities as defined in Code Section 38-2-190 for the use of the organized militia. (Ga. L. 1951, p. 311, § 25; Ga. L. 1955, p. 10, § 70.)

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, § 34.

38-2-192. Funding, equipping, and maintenance of facilities.

The equipping and maintenance of facilities defined in Code Section 38-2-190 shall be from funds appropriated and provided by the state, the United States, the counties, and municipalities, in whole or jointly, and, in the case of armories, from funds derived from rentals as set forth in Code Section 38-2-195. (Ga. L. 1955, p. 10, § 71.)

38-2-193. Military division authorized to accept and procure federal funds; adjutant general authorized to utilize funds for projects; recipient of federal funds.

(a) The Military Division, Department of Defense is designated as the agency of the state:

(1) To take such steps as may be necessary to develop programs for the expenditure of federal funds and to procure the allotment of such funds as may be provided by or pursuant to any act of Congress for the construction, demolition, reconstruction, improvement, equipping, furnishing, maintenance, and operation of armories, camps, ranges, bases, or any building, structure, or facility for the organized militia; and

(2) To execute and administer such programs and to cooperate with the federal authorities responsible therefor.

(b) The adjutant general, subject to the approval of the Governor, is authorized and empowered to negotiate for, accept, and approve projects, proposals, contracts, and agreements for the construction, reconstruction, expansion, conversion, purchase, lease, repair, rehabilitation, improvement, equipping, furnishing, maintenance, and operation, in whole or in part with federal funds, of armories, camps, ranges, bases, or any building, structure, or facility for the organized militia.

(c) When federal funds are made available or provided to the state either directly or by way of reimbursement for any moneys expended by the state for the construction, demolition, reconstruction, expansion, conversion, purchase, lease, repair, rehabilitation, improvement, equipping, furnishing, maintenance, and operation of any armory, camp, range, base, building, structure, or facility for the organized militia, the adjutant general is authorized to receive such funds on behalf of the state. (Ga. L. 1955, p. 10, § 72.)

38-2-194. Control of armories and other facilities; officer in charge.

All armories and other facilities defined in Code Section 38-2-190 owned, leased, or maintained by the state or by the United States for use of the organized militia and all activities conducted therein shall be under the general charge and control of the adjutant general. Unless otherwise designated by the adjutant general, the unit commander shall be the officer in charge of the armory and other facilities occupied by his unit; provided, however, that, where two or more units occupy the same armory or facility, the senior unit commander shall be the officer in charge. The officer in charge shall be directly responsible to the adjutant general for carrying out this part and regulations issued pursuant thereto. (Ga. L. 1955, p. 10, § 73.)

38-2-195. Use of armories and other facilities.

(a) Armories and other facilities which are owned, leased, and operated by the state will not be used at any time by others when the use will interfere in any way with the functions and training of the organized militia unit or units occupying the same.

(b) The use of armories and other facilities shall be in accordance with regulations issued pursuant to this part.

(c) Armories and other facilities of the organized militia shall not be used for political or religious purposes, except that an armory may be used for the purpose of holding the national or state convention of a political party with the prior approval of the adjutant general. (Ga. L. 1955, p. 10, § 74.)

Cross references. — Registration and organization of political parties and bodies generally, § 21-2-110.

OPINIONS OF THE ATTORNEY GENERAL

Use as polling places. — National Guard armories may be used as polling places in an election, unless the use would interfere in any way with the functions and purposes for which the armory is primarily intended. 1969 Op. Att'y Gen. No. 69-254.

Funds used to pay housekeepers subject to state requirements. — Funds collected by the Department of Defense as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by that department. The management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor, and the State Depository Board. Housekeeping personnel are state employees. As state employees, housekeeping personnel are entitled to the benefits authorized under the State Merit System and other

laws upon compliance with the terms of participation. 1993 Op. Att'y Gen. No. 93-4.

ARTICLE 3

PERSONNEL

Part 1

Officers

38-2-210. Appointment and promotion of commissioned officers; filling of vacancies; grounds for removal.

(a) All commissioned officers of the organized militia shall be appointed and promoted by the Governor upon recommendation of the commanding general or the commanding officer of the force in which such officers are to serve, or are serving. In the filling of vacancies, preference shall be given to personnel of the organized militia of the state when they are otherwise qualified.

(b) Commissioned officers of the organized militia may be removed in accordance with the applicable laws of the United States and the provisions of this chapter and the regulations issued thereunder. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-505, 86-516; Ga. L. 1951, p. 311, § 18; Ga. L. 1955, p. 10, § 40; Ga. L. 1959, p. 114, § 1; Ga. L. 1996, p. 740, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Adjutant General's authority includes the power to control the activities of the State Defense Force, to prescribe such officers as may be proper, and to plan and provide for training of the State Defense Force in a manner consistent with the law and regulations prescribed by the Governor. If the Governor directs, the adjutant general may also prescribe regulations, but the adjutant general does not have authority to appoint commissioned officers. 1992 Op. Att'y Gen. No. 92-2.

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 344.

38-2-211. Qualifications.

(a) No person shall be appointed or promoted as a commissioned officer of the organized militia unless he shall have passed such examination as to his physical, moral, and professional qualifications as may be prescribed by the laws of the United States and by this chapter and the regulations issued thereunder. No person shall be recognized as

a commissioned officer of the organized militia and no appointment as such shall become effective until he shall have taken and subscribed an oath of office.

(b) Any person who has been dismissed or discharged from the organized militia of this or any other state or from the armed forces of the United States or any reserve component thereof under other than honorable conditions and has not been restored to duty shall not be eligible for appointment as a commissioned officer in any force of the organized militia. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-504; Ga. L. 1955, p. 10, § 41.)

38-2-212. Assignment and transfer.

Commissioned officers may be assigned, reassigned, transferred, or detailed to and from units within the Army National Guard, to and from units within the Air National Guard, and to and from units within the Georgia Naval Militia as prescribed by the laws of the United States and by this chapter and by the regulations issued thereunder. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-605; Ga. L. 1955, p. 10, § 42.)

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 344.

38-2-213. Oath of office; by whom administered.

Every commissioned officer of the organized militia shall take and subscribe the oath of office prescribed for officers of the organized militia by the applicable laws of the United States and regulations issued pursuant to this chapter. The oath shall be taken and subscribed before an officer of the organized militia authorized to administer oaths as provided in this chapter or before a notary public or other officer authorized by the laws of this state to administer oaths. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-510; Ga. L. 1951, p. 311, § 18; Ga. L. 1955, p. 10, § 43.)

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 344.

38-2-214. Uniforms and equipment.

Every commissioned officer shall provide himself with such uniforms and articles of equipment as may be prescribed by regulations issued

pursuant to this chapter. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1003; Ga. L. 1955, p. 10, § 44.)

38-2-215. Efficiency and medical examining boards — Consideration by; composition and appointment of.

(a) The efficiency, moral character, and general fitness for retention in the organized militia of any commissioned officer may be investigated and determined by an efficiency examining board. The members of an efficiency examining board shall be senior in rank to the officer under investigation unless such senior officers are unavailable.

(b) The physical fitness for further service of any commissioned officer in the organized militia may be investigated and determined by a medical examining board of officers.

(c) Efficiency and medical examining boards shall be appointed by the Governor upon the recommendation of the adjutant general; provided, however, that whenever an examining board is appointed for the purpose of determining the fitness of any officer for continued federal recognition, the board shall be appointed by the commander designated in the applicable laws of the United States and the regulations issued thereunder. (Ga. L. 1955, p. 10, § 45.)

38-2-216. Efficiency and medical examining boards — Powers; procedure for appearances; discharge; transfer to reserve or retired list.

Efficiency and medical examining boards appointed by the Governor are vested with the powers of courts of inquiry and courts-martial. The boards shall follow the practice and procedure prescribed by applicable laws of the United States and the state and the regulations issued thereunder. Any officer ordered to appear before such a board shall be allowed to appear in person or by counsel, to cross-examine witnesses, and to call witnesses in his behalf. He shall at all stages of the proceeding be allowed full access to records pertinent to his case and be furnished with copies of the same. Failure to appear before any such examining board shall be sufficient ground for a finding by the board that the officer ordered to appear should be discharged. If the findings of the board are unfavorable to an officer and are approved as provided by applicable laws of the United States or by the Governor, the Governor shall relieve the officer from duty and shall give him a discharge in such form as may be appropriate; provided, however, that if the discharge of an officer is recommended solely because of physical inability to perform active service, the officer may be transferred to the state reserve list or the state retired list in accordance with this chapter. (Ga. L. 1955, p. 10, § 46.)

Cross references. — Convening of general courts-martial by Governor, § 38-2-390. Courts of inquiry generally, § 38-2-570.

38-2-217. Resignations; acts constituting resignation; types of discharge after resignation; resignation of officers who are accountable for military funds or property.

(a) A commissioned officer of the organized militia may tender his resignation at any time to the Governor. If the Governor accepts the resignation, the officer shall receive an honorable discharge; but, if the officer tendering his resignation is under arrest or if charges have been preferred against him for the commission of an offense punishable by a court-martial, he may be given a discharge in such form as the Governor may direct.

(b) Enlistment in the regular army, air force, navy, marine corps, or coast guard of the United States shall be deemed a resignation by the person so enlisting of all commissions in the militia held by him.

(c) The acceptance of a commission in the organized militia shall be deemed a resignation by the person accepting the same of any other commission held by him in the militia.

(d) Permanent removal from the state of an officer of the organized militia shall be deemed a resignation.

(e) All officers of the organized militia accountable or responsible for military funds or property who tender their resignations or who are deemed to have resigned shall be transferred immediately to an unassigned list pending discharge from such accountability or responsibility. The transfer shall not relieve the officers of their liability until they are discharged therefrom as provided by the laws of the United States and by this chapter and regulations issued pursuant thereto. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-514; Ga. L. 1951, p. 311, § 18; Ga. L. 1955, p. 10, § 47.)

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, §§ 344, 345.

38-2-218. Absence without leave.

Any commissioned officer of the organized militia who absents himself without leave for three months may be dismissed by the Governor. (Ga. L. 1955, p. 10, § 48; Ga. L. 1969, p. 228, § 2.)

38-2-219. Warrant officers.

The provisions of this article relating to commissioned officers shall apply to warrant officers and commissioned warrant officers except that warrant officers who have been absent without leave may be discharged as may be prescribed by the applicable laws of the United States and by this chapter and the regulations issued thereunder. (Ga. L. 1951, p. 311, § 18; Ga. L. 1955, p. 10, § 49.)

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 344.

Part 2

Enlisted Personnel

38-2-230. Enlistment; qualifications; period of service; transfer; discharge; extensions of enlistments.

(a) The qualifications for enlistment and reenlistment, the period of enlistment, reenlistment, and voluntary extension of enlistment, the period of service, the form of oath to be taken, and the manner and form of transfer and discharge of enlisted personnel of the forces of the organized militia shall be those prescribed by applicable laws of the United States and by this chapter and by regulations issued thereunder.

(b) Any person who has been discharged under other than honorable conditions from the organized militia of this or any other state or from any component of the armed forces of the United States and who has not been restored to duty shall not be eligible for enlistment in any force of the organized militia.

(c)(1) The Governor is authorized to extend the period of any enlistment, reenlistment, voluntary extension of enlistment, and the period of service of enlisted personnel of the organized militia for, but not exceeding the duration of, an emergency declared by him.

(2) Whenever the period of enlistment, reenlistment, voluntary extension of enlistment, and the period of service of enlisted personnel of the reserve components of the armed forces of the United States is extended, the Governor shall extend the period of any enlistment, reenlistment, voluntary extension of enlistment, and the period of service of enlisted personnel in the corresponding force of the organized militia for the same period. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-602, 86-603, 86-605; Ga. L. 1951, p. 311, § 19; Ga. L. 1955, p. 10, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, § 35.

C.J.S. — 6 C.J.S., Armed Services, §§ 343, 345.

38-2-231. Contract and oath of enlistment; penalty.

Every person who enlists or reenlists in any force of the organized militia shall sign an enlistment contract and shall take and subscribe such oath or affirmation of enlistment as may be prescribed by the applicable laws of the United States and by regulations issued pursuant to this chapter. The oath shall be taken and subscribed before any officer authorized by Code Section 38-2-213 to administer the oath of office to a commissioned officer. A person making a false oath as to any statement contained in the enlistment contract commits the offense of false swearing. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-604, 86-9905; Ga. L. 1951, p. 311, § 53; Ga. L. 1955, p. 10, § 51.)

Cross references. — False swearing generally, § 16-10-71.

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, § 36.

C.J.S. — 6 C.J.S., Armed Services, § 341.

38-2-232. Noncommissioned officers and petty officers; appointments; appointing officer; termination of appointment.

All noncommissioned officers and petty officers of the organized militia shall be appointed at the discretion of the appointing officer upon the nomination of the officer under whose immediate command they are to serve. The appointment shall be in accordance with regulations of the United States and regulations issued pursuant to this chapter. Appointing officers shall be designated in regulations issued pursuant to this chapter. The appointment of a noncommissioned officer or a petty officer may be terminated as prescribed by regulations issued pursuant to this chapter. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-601; Ga. L. 1955, p. 10, § 52.)

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, §§ 344, 345.

38-2-233. Discharges; conditions; form.

(a) An enlisted person may be discharged from any force of the organized militia prior to the expiration of his term of enlistment under such conditions as may be prescribed by applicable laws of the United States and by this chapter and regulations issued pursuant thereto.

(b) An enlisted person discharged from a force of the organized militia shall receive a discharge in writing in such form and of such type or classification as may be prescribed by applicable laws and regulations of the United States and by regulations issued pursuant to this chapter. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-607; Ga. L. 1951, p. 311, § 19; Ga. L. 1955, p. 10, § 53.)

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 345.

ALR. — What circumstances constitute laches barring federal judicial review of allegedly wrongful discharge from military service, 100 ALR Fed. 821.

38-2-234. Absent without leave; dropping from rolls.

When an enlisted person of the organized militia absents himself without leave for three months and there is reason to believe that he does not intend to return, he may be dropped from the rolls under such regulations as may be prescribed pursuant to this chapter. (Ga. L. 1955, p. 10, § 54.)

Part 3

Pay, Pensions, and Allowances

RESEARCH REFERENCES

ALR. — Constitutionality of statute providing for bounty or pensions for soldiers, 143 ALR 1530.

38-2-250. Pay while on active service; special duty; travel expenses; minimum base pay.

(a) Each member of the militia ordered into the active service of the state pursuant to Code Sections 38-2-6 and 38-2-72 or Code Section 45-12-31 or 45-12-34, shall receive for each day of such duty the same pay and allowances received by members of the appropriate force of the armed forces of the United States of corresponding grade, rating, and length of service.

(b) Pay and allowances for each day of special duty and state active duty provided for in subsections (b) and (c) of Code Section 38-2-25 shall be the same as the pay and allowances prescribed for members of the appropriate force of the armed forces of the United States of corresponding grade, rating, and length of service.

(c) In addition to the pay and allowances provided for members of the militia under subsections (a) and (b) of this Code section, such members shall also receive necessary travel expenses where authorized.

(d) The minimum base pay provided for members of the militia under subsections (a) and (b) of this Code section shall be $30.00 for each day of duty.

(e) Nothing in this Code section shall be construed as to apply when the National Guard is called into active service pursuant to Title 32 of the United States Code. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-903; Ga. L. 1951, p. 311, § 21; Ga. L. 1955, p. 10, § 75; Ga. L. 1964, p. 684, § 1; Ga. L. 1969, p. 228, § 3; Ga. L. 1971, p. 322, § 1; Ga. L. 1979, p. 886, § 1; Ga. L. 2004, p. 105, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d, Military and Civil Defense, § 38.

C.J.S. — 6 C.J.S., Armed Services, § 346.

38-2-251. Pay, care, etc., when injured or disabled in service; pensions; medical examining boards; rehearings.

Reserved. Repealed by Ga. L. 1981, p. 1585, § 5, effective July 1, 1981.

Editor's notes. — Ga. L. 2012, p. 775, § 38(1)/HB 942, reserved the designation of this Code section, effective May 1, 2012.

38-2-252. Uniform allowance for officers.

Whenever the military fund will permit, the Governor, in his discretion, may prescribe an allowance to officers to cover the expense of their uniforms, arms, and equipment. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1002; Ga. L. 1951, p. 311, § 21; Ga. L. 1955, p. 10, § 77.)

PART 4

RIGHTS, PRIVILEGES, AND PROHIBITIONS

38-2-270. Relief from civil or criminal liability; immunity not exclusive security for attorney's fees; defense by Attorney General authorized.

(a) Members and commanders of the militia who are performing duty pursuant to this chapter shall not be liable, civilly or criminally, for any acts done by them in the performance of their duty.

(b) When an action or proceeding of any nature is commenced in any court by any person against any member of the militia for any act done by him in his official capacity in the discharge of any duty under this chapter or an alleged omission by him to do an act which it was his duty to perform or against any person acting under the authority or order of any such member or by virtue of any warrant issued by him pursuant to law, the defendant may require the person instituting or prosecuting the action or proceeding to give security, in such amount as shall be determined by the judge of the court in which the action is pending, for the payment of attorney fees that may be awarded to the defendant therein. In default of giving such security the action or proceeding shall be dismissed. Such a defendant in whose favor a final judgment is rendered shall recover reasonable attorney's fees from the person instituting or prosecuting the action or proceeding. The immunity provided in this Code section shall be in addition to that provided by other provisions of law and this Code section shall not be construed to limit or qualify any other immunity provided to members or commanders of the militia by any other provision of law.

(c) In addition to the protections of subsections (a) and (b) of this Code section, the Governor is authorized to direct the Attorney General to defend any civil or criminal action brought against any member of the organized militia for any act done by him in the performance of his duty while in the active service of the state. (Ga. L. 1955, p. 10, § 78; Ga. L. 1969, p. 228, § 4; Ga. L. 1980, p. 824, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

As to immunity from liability of State Defense Force members when not on duty, there is no such immunity under Official Code of Georgia Title 38. O.C.G.A. § 38-2-270 is limited to acts and omissions by militia members in the performance of their duty. 1992 Op. Att'y Gen. No. 92-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 249 et seq., 259.

Am. Jur. Proof of Facts. — Entitlement to a Stay or Default Judgment Relief Under the Soldiers' and Sailors' Civil Relief Act, 35 POF3d 323.

C.J.S. — 6 C.J.S., Armed Services, § 350.

ALR. — Liability for injury or damages resulting from traffic accident on highway involving vehicle operated in military service, 133 ALR 1298; 147 ALR 1431.

Civil and criminal liability of soldiers, sailors, and militiamen, 135 ALR 10; 147 ALR 1429; 151 ALR 1463; 153 ALR 1432; 154 ALR 1457; 158 ALR 1462.

Exemption of member of armed forces from service of civil process, 137 ALR 1372; 149 ALR 1455; 150 ALR 1419; 151 ALR 1454; 153 ALR 1418; 153 ALR 1419; 156 ALR 1449; 157 ALR 1449; 158 ALR 1450.

Soldiers' and Sailors' Civil Relief Acts, 148 ALR 1395; 149 ALR 1457; 149 ALR 1463; 150 ALR 1420; 150 ALR 1428; 151 ALR 1456; 151 ALR 1460; 152 ALR 1452; 152 ALR 1457; 153 ALR 1422; 153 ALR 1429; 154 ALR 1448; 154 ALR 1455; 155 ALR 1452; 155 ALR 1456; 156 ALR 1450; 156 ALR 1455; 157 ALR 1450; 157 ALR 1454; 158 ALR 1450; 149 ALR 1463; 150 ALR 1428; 151 ALR 1460; 152 ALR 1457; 153 ALR 1429; 154 ALR 1455; 155 ALR 1456; 156 ALR 1455; 157 ALR 1454; 158 ALR 1456; 35 ALR Fed. 649; 35 ALR Fed. 649.

Service of process on person in military service by serving person at civilian abode or residence, or leaving copy there, 46 ALR2d 1239.

Validity of statute allowing attorney's fee to successful claimant but not to defendant, or vice versa, 73 ALR3d 515.

38-2-271. Change of venue for persons indicted or subjected to civil action for performance of military duty.

Any civil officer, officer, or member of the militia or any person lawfully aiding him in the performance of any military duty required under this chapter, if subjected to a criminal charge or civil action for any crime or trespass or for injury to person or property which occurred while endeavoring to perform such duty, shall have the right, and it is made the duty of the court in which the indictment, accusation, or action is pending upon the application of any person thus defending, to transfer the trial of the indictment, accusation, or action to some county other than that in which the indictment or accusation was found or the injury done. The transfer shall be made to any county that may be agreed upon by the prosecuting attorney and the defendant or his counsel in case of a criminal charge or by the parties and their counsel in case of a civil action. If a county is not thus agreed upon, the judge shall select a county as in his judgment will afford a fair and impartial jury to try the case and have it transferred accordingly. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1404; Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, § 79; Ga. L. 1982, p. 3, § 38.)

Cross references. — Change of venue generally, Ga. Const., 1983, Art. VI, Sec. II, Para. VII. Change of venue in civil actions, § 9-10-50 et seq. Change of venue in criminal actions, § 17-7-150.

RESEARCH REFERENCES

C.J.S. — 6 C.J.S., Armed Services, § 350.

38-2-272. Exemption from arrest on civil process; uniform and equipment exempt from levy and sale.

No person belonging to the organized militia of the state shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty. No part of the uniform or equipment of any officer or enlisted man of the organized militia shall be subject to levy and sale for debts. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-702; Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, § 80.)

Cross references. — Provisions regarding privilege from arrest of active duty military personnel, § 17-4-2.

JUDICIAL DECISIONS

Legislative purpose. — Legislative purpose of this immunity statute is to prevent civil interference with the militiary on active duty in the performance of duty. This purpose will be served only if the immunity is asserted at the earliest opportunity. Sanders v. City of Columbus, 140 Ga. App. 441, 231 S.E.2d 473 (1976).

Legislative purpose is defeated if the militiaman allows oneself to be deterred from the performance of the militia member's duty and then raises the privilege for the sole purpose of avoiding the criminal sanctions which the militia member faces. Sanders v. City of Columbus, 140 Ga. App. 441, 231 S.E.2d 473 (1976).

Limitation on police power to detain. — Statute appears to be a limit upon the police power to momentarily detain. Sanders v. City of Columbus, 140 Ga. App. 441, 231 S.E.2d 473 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 254, 259.

C.J.S. — 6 C.J.S., Armed Services, § 350.

ALR. — Exemption of member of armed forces from service of civil process, 137 ALR 1372; 149 ALR 1455; 150 ALR 1419; 151 ALR 1454; 153 ALR 1418; 153 ALR 1419; 156 ALR 1449; 157 ALR 1449; 158 ALR 1450.

Service of process on person in military service by serving person at civilian abode or residence, or leaving copy there, 46 ALR2d 1239.

38-2-273. Free passage through tollgates, tunnels, toll bridges, and ferries while under orders.

Any person belonging to the organized militia shall, together with the conveyance and property of the state or of the United States in his charge, be allowed to pass free through all tollgates and tunnels and

over all toll bridges and ferries if he is in uniform and presents an order for duty or certificate of an order for duty. (Ga. L. 1955, p. 10, § 81.)

38-2-274. Unlawful conversion of military property; penalty.

(a) It shall be unlawful for any person to secrete, sell, dispose of, offer for sale, purchase, retain after demand by a commissioned officer of the organized militia, or in any manner pawn or pledge any arms, uniforms, equipment, or other military property issued under this chapter.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor.

(c) No judge, district attorney, solicitor-general, sheriff, court clerk, or other peace officer shall require the payment of any fees, court costs, or charges of any nature for any warrant obtained by the prosecutor for the unlawful conversion of military property. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1105, 86-9904; Ga. L. 1951, p. 311, § 52; Ga. L. 1955, p. 10, §§ 82, 107; Ga. L. 1980, p. 589, § 1; Ga. L. 1996, p. 748, § 19.)

Cross references. — Theft by conversion generally, § 16-8-4.

Editor's notes. — Ga. L. 1996, p. 748, § 27, not codified by the General Assembly, provides: "Notwithstanding any other provision of law, an Act approved February 11, 1854 (Ga. L. 1854, p. 281), which abolished the office of solicitor of the City Court of Savannah, now the State Court of Chatham County, and transferred responsibility for the prosecution of criminal cases in said court to the solicitor general (now the district attorney) for the Eastern Judicial Circuit is confirmed. It shall be the duty of said district attorney to prosecute all criminal actions in said state court until otherwise specifically provided by law."

Ga. L. 1996, p. 748, § 28, not codified by the General Assembly, provides: "The provisions of this Act shall not affect the powers, duties, or responsibilities of the district attorney as successor to the office of solicitor general under the constitution, statutes, and common law of this state as provided by Code Section 15-18-1."

Ga. L. 1996, p. 748, § 29, not codified by the General Assembly, provides: "Except as otherwise authorized in this Act, on and after July 1, 1996, any reference in general law or in any local Act to the solicitor of a state court shall mean and shall be deemed to mean the solicitor-general of such state court."

Ga. L. 1996, p. 748, § 30, not codified by the General Assembly, provides: "The provisions of paragraph (3) of Code Section 15-18-62, relating to the qualifications for the office of solicitor-general of a state court, shall apply to any person elected or appointed to such office after July 1, 1996. Any person holding such office on July 1, 1996, may continue to hold such office for the remainder of the term to which such person was elected or appointed notwithstanding the fact that such person has not been a member of the State Bar of Georgia for three years if such person is otherwise qualified to hold the office of solicitor-general."

RESEARCH REFERENCES

ALR. — Nature of property or rights other than tangible chattels which may be subject of conversion, 44 ALR2d 927.

38-2-275. Unlawful wearing of uniforms and devices indicating rank; penalty.

(a) It shall be unlawful for any person except members of components of the armed forces of the United States, members of the organized militia of this or any other state, members of associations wholly composed of persons honorably discharged from the armed forces of the United States, and members of associations wholly composed of children of veterans of any war of the United States to wear any uniform or any device, strap, knot, or insignia of any design or character used as a designation of grade, rank, or office such as are by law or by regulation, duly promulgated, prescribed for the use of the organized militia or similar thereto, provided that this Code section shall not apply to cadets of military schools, the Boy Scouts of America, or to persons wearing on the stage any such uniform at theatrical or like performances.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-9902; Ga. L. 1951, p. 311, § 50; Ga. L. 1955, p. 10, §§ 82, 108.)

Cross references. — Impersonation of public officers or employees generally, § 16-10-23.

RESEARCH REFERENCES

ALR. — Nature of property or rights other than tangible chattels which may be subject of conversion, 44 ALR2d 927.

38-2-276. Exemptions from jury duty and street tax.

Officers and enlisted personnel of the organized militia shall be exempt from street tax and, while serving on ordered active duty, from jury duty, any local or special laws to the contrary notwithstanding. The commanding officer of each or any force of the organized militia shall furnish each member of his command applying for the same such certificate of membership as may be prescribed by the adjutant general, signed by the commanding officer, which certificate shall be accepted by any court as proof of exemption as provided by this Code section. The certificate shall be good only for 30 days after which it bears date. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-701; Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, § 83.)

Cross references. — Exemptions from jury duty generally, § 15-12-1.1. Authority to levy and collect street tax, § 48-13-3.

OPINIONS OF THE ATTORNEY GENERAL

Section repealed in part. — Former Code 1933, § 86-701 (see O.C.G.A. § 38-2-276) was in conflict with former Code 1933, § 59-112 (see O.C.G.A. § 15-12-1 (now O.C.G.A. § 15-12-1.1)) and was therefore repealed insofar as it purported to grant specific exemptions from jury duty to members of the organized militia. 1967 Op. Att'y Gen. No. 67-296.

38-2-277. Unauthorized military bodies prohibited; exceptions; support by counties or cities prohibited; penalty for membership.

(a) No body of men other than the organized militia, components of the armed forces of the United States, and bodies of the police and state constabulary and such other organizations as may be formed under this chapter shall associate themselves together as a military unit or parade or demonstrate in public with firearms.

(b) Associations wholly comprised of military personnel honorably discharged from the service of the United States and benevolent and secret organizations may parade in public with swords. Students in educational institutions where military science is a prescribed part of the course of instruction may drill or parade with firearms in public under the supervision of their instructors. This Code section shall not be construed to prevent parades in public with firearms by authorized organizations of the organized militia of any other state.

(c) No political subdivision of this state shall raise or appropriate any money toward arming, equipping, uniforming, or in any other way supporting, sustaining, or providing drill rooms or armories for any such unauthorized organizations.

(d) Any person who actively participates in an unauthorized military organization or who parades with any unauthorized body of men as set forth in subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1916, p. 158, § 2; Code 1933, § 86-9901; Ga. L. 1951, p. 311, § 49; Ga. L. 1955, p. 10, §§ 84, 109.)

38-2-278. Devises, bequests, and conveyances to military units as societies; officers as trustees; effect of disbandment of unit.

Every unit of the organized militia is and shall be deemed to be a society within the meaning of Code Section 14-5-49, and Code Sections 14-5-46 through 14-5-48 shall apply to such society; provided, however, the commissioned officer or officers of the unit shall constitute the trustee or trustees of such society; and provided, further, should any unit have assigned more than three commissioned officers, the senior

three shall constitute the trustees of the society. The name or names of the trustee or trustees shall be certified under the hand of the commanding officer of the unit and the certificate shall be recorded in the office of the clerk of the superior court of the county wherein lies any property held in trust by the trustee or trustees. Any vacancy which may happen in the trust shall be filled by the officer appointed to fill the vacancy in the unit. When any such vacancy shall be filled, the same shall be certified under the hand of the commanding officer of the unit, which certificate shall state the name of the officer to fill the vacancy and the name of the officer whom he succeeds unless the officer fills an original vacancy in the unit; and the certificate shall be recorded in the office of the clerk of the superior court of the county wherein lies property held in trust by the trustees. Any such society referred to in this Code section may take and hold by devise or bequest the title to real and personal property for its uses and purposes as a military organization in addition to its right and power to take the same by deed of conveyance and, subject to the uses and purposes contained in the deed of conveyance or devise or bequest, may mortgage, sell, lease, or otherwise dispose of the same. Should any such unit be deactivated, disbanded, moved from the locality where it acquired the title to the property, called or ordered into the active service of the United States, or by orders of competent authority cease to function as a unit of the organized militia, the title to any such property held by the unit shall vest in trust in the adjutant general, or other officer nearest correspond-ing to the adjutant general should that office not be in existence, to be conveyed by him to the trustees of some other unit of the organized militia nearest like the predecessor unit, as determined by him, in trust for military purposes. (Ga. L. 1955, p. 10, § 85; Ga. L. 1982, p. 3, § 38.)

38-2-279. Rights of public officers and employees absent on military duty as members of organized militia or reserve forces.

(a) **Definitions.** As used in this Code section, the term:

(1) "Ordered military duty" means any military duty performed in the service of the state or of the United States including but not limited to attendance at any service school or schools conducted by the armed forces of the United States by a public officer or employee as a voluntary member of the National Guard or of any reserve force or reserve component of the armed forces of the United States pursuant to orders issued by competent state and federal authority.

(2) "Public officer or employee" means every person, by whatever title, description, or designation known, who receives any pay, salary, or compensation of any kind from the state, a county, municipal corporation, or any other political subdivision or who is in any

department of the state, but shall not include persons employed by the state, a county, municipal corporation, or any other political subdivision on a temporary basis.

(b) Every public officer or employee shall be entitled to absent himself or herself and shall be deemed to have a leave of absence from duties or service as a public officer or employee while engaged in the performance of ordered military duty and while going to and returning from such duty. Notwithstanding Code Section 45-5-1 or any other provision of law, a public office shall not be considered vacated or abandoned by a public officer while on ordered military duty.

(c) **Leave of absence while attending service schools.** Every public officer or employee who is or becomes a voluntary member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States shall be entitled to absent himself or herself and shall be deemed to have a leave of absence from duties or service as a public officer or employee while in attendance as a member of such force or reserve component at any service school or schools conducted by the armed forces of the United States for a period or periods up to and including six months and while going to and returning from the school or schools, notwithstanding that orders for such attendance are or may be issued with the consent of the public officer or employee. However, no public officer or employee shall be entitled to absent himself or herself in excess of a total of six months during any four-year period.

(d) **Employment rights.** Time during which a public officer or employee is absent pursuant to subsections (b) and (c) of this Code section shall not constitute an interruption of continuous employment and, notwithstanding any general, special, or local law or any city charter, no such officer or employee shall be subjected directly or indirectly to any loss or diminution of time, service, increment, vacation, holiday privileges, or any other right or privilege by reason of such absence or be prejudiced with reference to continuance in office or employment, reappointment to office, reemployment, reinstatement, transfer, or promotion by reason of such absence.

(e) Every public officer or employee shall be paid his or her salary or other compensation as such public officer or employee for any and all periods of absence while engaged in the performance of ordered military duty and while going to and returning from such duty, not exceeding a total of 18 days in any one federal fiscal year. In the event the Governor declares an emergency and orders any public officer or employee to ordered military duty as a member of the National Guard, any such officer or employee, while performing such duty, shall be paid his or her salary or other compensation as a public officer or employee for a period not exceeding 30 days in any one federal fiscal year.

(e.1)(1) On and after July 1, 2002, every public officer or employee may be paid by the government employer the difference between his or her government salary and his or her military salary for any or all periods of absence while engaged in the performance of ordered military duty and while going to and returning from such duty, after expiration of the payment period provided for in subsection (e) of this Code section.

(2) To the extent that funds are appropriated or otherwise made available to the Department of Community Affairs for such purpose, the department may provide grants to counties, municipal corporations, and other political subdivisions to reimburse them for their costs incurred under paragraph (1) of this subsection. The department shall provide by rule for the administration of such grant program; and such rules shall provide for pro rata distribution in the event that the funds available are insufficient to reimburse all such costs.

(f) **Rights and contributions under retirement systems.**

(1) The amount of required contributions to any pension or retirement system of which a public officer or employee, absent while engaged in the performance of ordered military duty, is a member shall be deducted from the salary or other compensation paid to such public officer or employee as a public officer or employee as provided in this Code section. If the required contributions exceed the amount of such salary or other compensation to which a public officer or employee is entitled while engaged in the performance of military duty, the amount of the salary or other compensation shall be applied upon the required contributions; and the public officer or employee shall have the right to pay to the pension or retirement system the amount by which the contributions exceed the salary or other compensation. The public officer or employee shall also have the right to pay to the system, for any period of such absence during which he or she shall receive no salary or other compensation as a public officer or employee, the amount that he or she would have contributed to the system if he or she had been present and continuously engaged in the performance of the duties of his or her position during such period.

(2) Payments made pursuant to paragraph (1) of this subsection, other than those deducted from his or her salary or other compensation as an officer or employee, may be paid from time to time at any time while engaged in ordered military duty or within five years after the date of termination of the ordered military duty or, in the event of the death of the public officer or employee while engaged in ordered military duty, the payments or any part thereof may be made by the named beneficiary or the legal representative of the public officer's or employee's estate within one year following proof of such death.

(3) To the extent that contributions made pursuant to paragraphs (1) and (2) of this subsection are paid, the period of absence while engaged in the performance of ordered military duty shall be counted in determining the length of total service under the pension or retirement system.

(4) While engaged in the performance of ordered military duty, any such public officer or employee or his or her beneficiary, as the case may be, shall be entitled to all the benefits of the pension or retirement system of which such public officer or employee is a member, except accidental disability retirement and accidental death benefit.

(g) Notwithstanding the provisions of Chapter 14 of Title 50, an agency, as defined by subsection (a) of Code Section 50-14-1, shall be authorized to conduct meetings by telecommunications conference in the event that one or more of the agency's members is on ordered military duty at the time of such meeting, provided that any such meeting is conducted in compliance with such chapter. The members of the agency, including those on ordered military duty, shall be authorized to participate and make decisions during such a telecommunications conference.

(h) **Exception as to draftees, etc.** This Code section shall not apply to:

(1) Any public officer or employee who was or is involuntarily transferred, assigned, drafted, or inducted to or into any of the forces of the organized militia or any of the reserve forces or reserve components of the armed forces of the United States; or

(2) Any public officer or employee who was or is inducted into the armed forces of the United States, but not as a member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States. (Ga. L. 1955, p. 10, § 86; Ga. L. 1959, p. 114, § 7; Ga. L. 1979, p. 623, § 1; Ga. L. 1987, p. 1299, § 1; Ga. L. 1997, p. 1538, § 1; Ga. L. 1998, p. 128, § 38; Ga. L. 2002, p. 1152, §§ 1, 2; Ga. L. 2002, p. 1159, § 1; Ga. L. 2002, p. 1160, §§ 2, 3.)

Cross references. — Qualifying in absentia for magistrates serving on active duty, § 15-10-20.1. Effect of service in armed forces of United States during World War II on retirement benefits under county and municipal retirement systems, § 47-1-6.

Code Commission notes. — The amendment of this Code section by Ga. L. 2002, p. 1159, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 1160, § 3. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Law reviews. — For article, "Protecting America's Reservists, Application of State and Federal Law to Reservists' Claims of Unfair Labor Practices," see 7 Ga. St. B.J. 10 (2002).

JUDICIAL DECISIONS

State employee's claim against the state was barred by sovereign immunity. — State employee allegedly terminated for military service could not recover against the state under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4311 et seq., and O.C.G.A. § 38-2-279(e). The employee's claim under USERRA was barred by the Eleventh Amendment, and the claim under § 38-2-279 was barred by sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Par. IX(e). Anstadt v. Bd. of Regents of the Univ. Sys. of Ga., 303 Ga. App. 483, 693 S.E.2d 868 (2010), cert. denied, No. S10C1291, 2010 Ga. LEXIS 713 (Ga. 2010).

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Persons covered by statute. — Duly elected county superintendent of schools is a public officer within the terminology and definitions contained in statute. 1960-61 Op. Att'y Gen. p. 131.

Service by policemen and firemen in the United States armed forces reserves during the annual two weeks of active duty would come within the definition of "ordered military duty". 1968 Op. Att'y Gen. No. 68-88.

Working test employee is eligible for the benefits provided by statute. 1969 Op. Att'y Gen. No. 69-303.

Persons not covered. — As members of the Civil Air Patrol must consent to being ordered to military duty, the members do not come within the terms of this section which require that the members be ordered "without the consent of such public officer or employee." 1960-61 Op. Att'y Gen. p. 449 (see O.C.G.A. § 38-2-279).

Absence due to service with the federal Public Health Reserve Corps should not be considered as military leave (see O.C.G.A. § 38-2-279). 1965-66 Op. Att'y Gen. No. 66-138.

Monthly weekend drill within definition of "ordered military duty." — One-half day weekend drill attended once a month after basic training comes within the definition of "ordered military duty," and the said one-half day's military leave may be accumulated up to the limit specified in subsection (e), and would be computed and allowed in connection with any other ordered military duty taken by the employee, not to exceed that limitation. 1960-61 Op. Att'y Gen. p. 450 (rendered under Ga. L. 1955, p. 10, prior to revision by Ga. L. 1979, p. 623, § 1).

Compensation for "ordered military duty." — Under O.C.G.A. § 38-2-279, a public officer or employee may not be paid for more than 30 days of "ordered military duty" in a calendar year, but the appointing authority has the discretion to allow such an employee to utilize accumulated annual leave for any ordered military duty in excess of 30 days. 1986 Op. Att'y Gen. No. 86-37.

Computation of days paid for ordered military duty. — When the ordered military duty of an employee covered a period of the last 25 days of one year and the first five days in the next year, the employee would be paid for 25 days within the first year and five days in the second year, and the employee would have 25 days remaining in the second year for which the employee could be paid. 1960-61 Op. Att'y Gen. p. 450 (rendered under Ga. L. 1955, p. 10, prior to revision by Ga. L. 1979, p. 623, § 1).

Public officer entitled to leave of absence. — Public officer is entitled to absent oneself and have a leave of absence from performance of the officer's duties as such public officer while away and engaged in the performance of "ordered military duty," and the officer need not therefore resign such position. 1960-61 Op. Att'y Gen. p. 131.

RESEARCH REFERENCES

ALR. — Reemployment or reinstatement of public officer or employee as restoration of original status as regards incidental rights privileges, 89 ALR 684.

Constitutionality, construction, and application of statutes concerning status and rights, as regards governmental bodies, or public officers or employees in civil service, while performing military or naval duty, 134 ALR 919.

Induction or voluntary enlistment in military service as creating a vacancy in, or as ground for removal from, public office or employment, 147 ALR 1427; 148 ALR 1400; 150 ALR 1447; 151 ALR 1462; 152 ALR 1459; 154 ALR 1456; 156 ALR 1457; 157 ALR 1456.

Reemployment of discharged servicemen, 167 ALR 124; 29 ALR2d 1279; 9 ALR Fed. 225.

Applicability to fringe benefits of Vietnam Era Veterans' Readjustment Assistance Act provision establishing veterans' reemployment rights (38 USCS sec. 2021), 83 ALR Fed. 908.

38-2-280. Reemployment in private industry; various types of absences; injunction to compel; Attorney General's aid.

(a) In the case of any person who has left or leaves a position, other than a temporary position, in the employ of any employer in order to perform military service and who:

(1) Received a certificate of completion of military service duly executed by an officer of the applicable force of the armed forces of the United States or by an officer of the applicable force of the organized militia;

(2) Is still qualified to perform the duties of the position; and

(3) Makes application for reemployment within 90 days after he or she is relieved from such service, if the position was in the employ of a private employer,

the employer shall restore the person to the position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

(b) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who, in order to participate in assemblies or annual training pursuant to Code Section 38-2-25 or in order to attend service schools conducted by the armed forces of the United States for a period or periods up to and including six months, temporarily leaves or has left his or her position, other than a temporary position, in the employ of any employer and who, being qualified to perform the duties of the position, makes application for reemployment within ten days after completion of the temporary period of service; provided, however, that no such person shall be entitled to the benefits, rights, and privileges for the attendance at any service school or schools exceeding a total of six months during any four-year period.

(c) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who is or becomes a member of the organized militia or of a reserve component of the armed forces of the United States and who because of such membership is discharged by his or her employer or whose employment is suspended by his or her employer because of such membership and who, being qualified to perform the duties of the position, makes application for reemployment or termination of the period of his or her suspension within ten days after such discharge or suspension. In the event that the member of the organized militia or reserve component is serving on military duty at the time of receipt of notice of the discharge or suspension the aforesaid ten-day period within which application must be made shall not commence to run until the day next following the date of termination of such military duty.

(d) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who is a member of the Georgia National Guard and who is called into active state service pursuant to Code Section 38-2-6 or 38-2-6.1 and who because of such active state service is discharged by his or her employer or whose employment is suspended by his or her employer because of such active state service and who, being qualified to perform the duties of the position, makes application for reemployment or termination of the period of his or her suspension within ten days after such discharge or suspension. In the event that the member of the Georgia National Guard is serving in active state service at the time of receipt of notice of the discharge or suspension the aforesaid ten-day period within which application must be made shall not commence to run until the day next following the date of termination of such active state service.

(e) Any person who is restored to a position in accordance with this Code section shall be considered as having been on furlough, on leave of absence during his or her period of military service, performing temporary service under subsection (b), or discharged or suspended under subsection (c) or (d) of this Code section, shall be restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time the person entered the military service or commenced the temporary service or was so discharged or suspended, and shall not be discharged from the position without cause within one year after the restoration.

(f) If any private employer fails or refuses to comply with this Code section, the superior court of the county in which the private employer

resides shall have the power, upon petition by the person entitled to the benefits of this Code section, to require specifically the employer, by injunction, mandatory or otherwise, to comply with this Code section, and may, as an incident thereto, compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order a speedy hearing in any such case and may specially set it on the calendar. Any person claiming to be entitled to the benefits of this Code section may appear by his or her own counsel or, upon application to the Attorney General of the state, may request that the Attorney General appear and act on his or her behalf. If the Attorney General is reasonably satisfied that the person so applying is entitled to such benefits, he or she shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any petition and the prosecution thereof. In the hearing and determination of petitions under this Code section no fees or court costs shall be assessed against a person so applying for such benefits. (Ga. L. 1955, p. 10, § 87; Ga. L. 1959, p. 114, §§ 8, 9; Ga. L. 1995, p. 730, § 1.)

Law reviews. — For article, "Protecting America's Reservists, Application of State and Federal Law to Reservists' Claims of Unfair Labor Practices," see 7 Ga. St. B.J. 10 (2002).

JUDICIAL DECISIONS

Suspension before scheduled military leave. — O.C.G.A. § 38-2-280 offered no relief to an employee who was suspended before the employee took a scheduled military leave, who did not lose the employee's position to a replacement because the employee was gone for two weeks. Britt v. Georgia Power Co., 677 F. Supp. 1169 (N.D. Ga. 1987).

RESEARCH REFERENCES

ALR. — Reemployment of discharged servicemen, 167 ALR 124; 29 ALR2d 1279.

Determination of seniority rights of employee as proper subject of declaratory suit, 172 ALR 1247.

What is "cause" justifying discharge from employment of returning serviceman re-employed under sec. 9 of the Military Selective Service Act of 1967 (50 USC Appendix sec. 456), 9 ALR Fed. 225.

Applicability to fringe benefits of Vietnam Era Veterans' Readjustment Assistance Act provision establishing veterans' reemployment rights (38 USCS sec. 2021), 83 ALR Fed. 908.

38-2-281. Exclusion of uniformed military personnel from places of amusement; penalty.

It shall be unlawful for the owner or the owner's agent, whatever may be the latter's designation, of any place of amusement or recreation otherwise open to the general public, admission to which is free or otherwise, to refuse admission or exclude any officer or enlisted man of any component of the armed forces of the United States or the organized militia of this state or of any state, territory, or the District of

Columbia from the place of amusement or recreation by reason of such officer's or enlisted man's being in uniform. Any owner or agent aforesaid who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-9911; Ga. L. 1951, p. 311, § 59; Ga. L. 1955, p. 10, § 118.)

RESEARCH REFERENCES

ALR. — Refusing admission to, or ejecting from, place of amusement, 30 ALR 951; 60 ALR 1089.

38-2-282. Officers and warrant officers to administer oaths and witness documents.

Any commissioned officer or warrant officer of any force of the organized militia and any officer in the active military service of the United States is authorized to administer the oath required for the enlistment of any person, the oath required for the appointment of any person to commissioned or warrant officer grade, and any other oath required by the laws of the United States and by this chapter and by the regulations issued thereunder, in connection with the enlistment or appointment of any person in any of such forces, and to witness military documents and instruments over his official signature. (Ga. L. 1951, p. 311, § 18; Ga. L. 1955, p. 10, § 88.)

38-2-283. Awards; individual; unit.

(a) Every officer and enlisted man who has served this state honorably and faithfully for ten years, continuously or otherwise, and who continues in active service as an officer or enlisted man after that period shall be awarded a bronze medal of suitable design and inscription; and after each additional ten years of honorable and faithful service, continuous or otherwise, there shall be awarded, upon like continuance in service, a suitable bar. These medals and bars shall be furnished by the state through the military division upon application of the person entitled thereto, approved by intermediate commanders, and the expenses of the same shall be paid out of the military fund.

(b) In addition to the awarding of the medals and bars provided in subsection (a) of this Code section, the adjutant general is authorized to award distinctive service medals to officers and enlisted men and honorably discharged officers and enlisted men of the organized militia for meritorious services performed by the officers and enlisted men under the following provisions:

(1) The design and inscription on the medals shall be determined by the adjutant general;

(2) Not more than five medals shall be awarded in one calendar year;

(3) Two medals shall be awarded at the discretion of the adjutant general for meritorious service performed by any officer or enlisted man;

(4) Three medals shall be awarded by the adjutant general annually upon the recommendation of a board of five officers. The five officers are to be appointed each year for the purpose of selecting the three members of the organized militia who have performed the most meritorious services during the calendar year;

(5) The adjutant general shall be authorized to make such rules and regulations as he may deem advisable with reference to convening the board provided for in paragraph (4) of this subsection and the evidence as to meritorious services to be considered by the board; and

(6) The expense of the medals shall be paid from the military fund.

(c) On the recommendation of the adjutant general, the Governor may authorize the award of trophies, citations, and other types of awards to members and units of the organized militia for outstanding achievements as he deems advisable to inspire the spirit of competition and to stimulate interest to the end that technical proficiency and a high standard of efficiency in administration and training are attained. The expense of the awards shall be paid from the military fund. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1407; Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, § 89.)

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Purchases subject to Art. 3, Ch. 5, T. 50. — All purchases of medals, awards, and trophies should be made by requisition to the state supervisor of purchases (now department of administrative services) who shall purchase the items under the provisions and regulations of the State Purchasing Act (see O.C.G.A. Art. 3, Ch. 5, T. 50). 1960-61 Op. Att'y Gen. p. 440.

38-2-284. Applicability of part to residents who are personnel of the National Guard of other states.

Any other provision of law to the contrary notwithstanding, the provisions of this part shall apply to residents of this state who are personnel of the Army National Guard or Air National Guard of any other state. (Code 1981, § 38-2-284, enacted by Ga. L. 1993, p. 1774, § 1.)

ARTICLE 4

ACTIVE DUTY POWERS

38-2-300. Right of way for troops; exceptions; penalty.

(a) The commanding officer of any force of the organized militia which is parading or performing any military duty in any street or highway may require any or all persons in the street or highway to yield the right of way to the militia, provided the carriage of the United States mail, the legitimate functions of the police, and the progress and operations of ambulances, fire departments, and fire engines and apparatus shall not be interfered with thereby. It shall be unlawful for all others to hinder, delay, or obstruct any unit of the organized militia wherever parading or performing any military duty, or to attempt to do so.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1402; Ga. L. 1951, p. 311, § 24; Ga. L. 1955, p. 10, §§ 97, 111.)

RESEARCH REFERENCES

ALR. — Liability for injury or damages resulting from traffic accident on highway involving vehicle in military service, 147 ALR 1431.

Validity, construction, and application of state or local enactments regulating parades, 80 ALR5th 255.

38-2-301. Closing places where firearms and ammunition sold, where disorder likely to occur; penalty for not obeying closing order.

(a) Whenever any force of the organized militia is or has been called out for the performance of any duty under Code Section 38-2-6, it shall be lawful for the commanding officer of the force, if in his judgment the maintenance of law and order in the area into which the force has been ordered will be promoted thereby, to close places where arms and ammunition are sold and all places where disorder is likely to occur.

(b) Any person who sells or dispenses arms or ammunition in violation of an order of a commanding officer under the authority of subsection (a) of this Code section or who maintains a place ordered to be closed under such authority shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than five years. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1301; Ga. L. 1951, p. 311, § 5; Ga. L. 1955, p. 10, §§ 98, 112.)

38-2-302. Control of streets in case of riot, rout, mob, tumult, or unlawful assembly; penalty for remaining on or failing to depart streets.

(a) Whenever any force of the organized militia is or has been called out for the performance of any duty under this chapter, it shall be lawful for the commanding officer of the force, if it is deemed advisable to do so in subduing or preventing any riot, rout, mob, tumult, or unlawful assembly or the outbreak thereof, to prohibit all persons from occupying or passing any street, road, or place in the vicinity of the riot, rout, mob, tumult, or unlawful assembly, or the place where the same is threatening, or where the force may be at the time being; and otherwise to regulate the passage and occupancy of the streets and places.

(b) Any person after being duly informed of any prohibition or regulation authorized by subsection (a) of this Code section for closing or otherwise controlling streets, roads, or places who attempts to go or to remain on such street, road, or place, or who fails to depart after being warned, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1308, 86-9908; Ga. L. 1951, p. 311, §§ 5, 56; Ga. L. 1955, p. 10, §§ 99, 113.)

Cross references. — Rioting generally, § 16-11-30. Unlawful assembly, § 16-11-33.

38-2-303. Dispersion of mob; orders; where order unnecessary; penalty for failure to disperse.

(a) Before using any military force in suppression of any riot, rout, tumult, mob, or other lawless or unlawful assembly or combination, it shall be the duty of the officer in command of the force, or some person deputed by him, to command the persons composing the riotous or unlawful assembly or mob to disperse and return peaceably to their abodes and businesses. In no case shall it be necessary to use any set or particular form of words in ordering the dispersion of any riotous, tumultuous, or unlawful assembly, nor shall any command be necessary when the officer or person, in order to give it, would be put in imminent danger of bodily harm or loss of life or where the unlawful assembly or mob is engaged in the commission or perpetration of any felony, in assaulting or attacking any civil officer or person called to aid him in the preservation of the peace, or is otherwise engaged in actual violence to person or property.

(b) Any person or persons composing or taking part in any riot, rout, mob, tumult, or lawless combination or assembly who, after being duly commanded to disperse as provided in subsection (a) of this Code

section, willfully and intentionally fail to do so shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1304, 86-9906; Ga. L. 1951, p. 311, §§ 5, 54; Ga. L. 1955, p. 10, §§ 100, 114; Ga. L. 1982, p. 3, § 38; Ga. L. 1992, p. 6, § 38.)

Cross references. — Rioting generally, § 16-11-30. Unlawful assembly, § 16-11-33.

RESEARCH REFERENCES

C.J.S. — 77 C.J.S., Riot; Insurrection, § 31 et seq.

38-2-304. Duty of citizens to disperse when shot fired or missile thrown; penalty; felony upon failure to disperse after order.

(a) Whenever any shot is fired or missile thrown at, against, or upon any force of the organized militia or against any officer or member thereof assembling or assembled for the purpose of performing any duties under this chapter, it shall forthwith be the duty of every person in the assemblage from which the shot is fired or the missile thrown to disperse immediately and retire therefrom without awaiting any order to do so.

(b) Any person failing to retire immediately from any assemblage after a shot has been fired or a missile thrown in any manner mentioned in subsection (a) of this Code section shall be guilty of a misdemeanor; and any person so remaining in the assemblage after being duly commanded to disperse as provided in Code Section 38-2-303 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1307, 86-9907; Ga. L. 1951, p. 311, §§ 5, 55; Ga. L. 1955, p. 10, §§ 101, 115.)

Cross references. — Rioting generally, § 16-11-30. Unlawful assembly, § 16-11-33.

38-2-305. Authority of commanding officer to order vicinity of jail, building, or other place, off limits to unauthorized personnel; arrest; penalty.

(a) The commanding officer of any force of the organized militia guarding any jail, building, or other place or escorting any prisoner or performing any other act of duty may, if he deems it advisable, prescribe a reasonable distance in the vicinity of the jail, building, or other place,

or escort of the prisoner within which unauthorized persons shall not come. Any person coming within the limits so prescribed may be placed in arrest by the military authorities.

(b) Any person coming within the limits prescribed by the commanding officer of any body or force of the organized militia under subsection (a) of this Code section without the permission of the officer, or refusing to depart after being ordered to do so, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1403, 86-9909; Ga. L. 1951, p. 311, §§ 24, 57; Ga. L. 1955, p. 10, §§ 102, 116.)

RESEARCH REFERENCES

ALR. — Curfew in war time, 147 ALR 1270.

38-2-306. Prohibited conduct in area of military duty performance.

(a) Any person who after due warning trespasses upon any armory, arsenal, camp, range, base, or other facility of the organized militia or other place where any force of the organized militia is performing military duty, or who in any manner interrupts or molests the discharge of military duties by any member or force of the organized militia, or who interrupts or prevents the passage of troops of the organized militia, or who insults, by jeer or otherwise, any member of the organized militia may be placed in arrest by any officer of the force performing the military duty at the place where the offense is committed and delivered to the proper civil authorities.

(b) The commanding officer of any force of the organized militia performing military duty in or at any armory, arsenal, camp, range, base, or other facility of the organized militia or other place where the force is performing military duty may prohibit persons from hawking, peddling, vending, selling, or auctioning goods, wares, merchandise, food products, or beverages and may prohibit all gambling, or the sale or use of spirituous beverages, or the establishment or maintenance of a disorderly place within the limits of the armory, arsenal, camp, range, base, or other facility of the organized militia or other place where the force is performing military duty or within such limits not exceeding one mile therefrom as he may prescribe.

(c) Any person who violates any part of subsection (a) or (b) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1405, 86-9910; Ga. L. 1951, p. 311, §§ 24, 58; Ga. L. 1955, p. 10, §§ 103, 117.)

Cross references. — Criminal trespass generally, § 16-7-21.

RESEARCH REFERENCES

ALR. — Curfew in war time, 147 ALR 1270.

38-2-307. Power of National Guard members to effect an arrest.

Members of the National Guard may, at the discretion of the Governor, have the same powers of arrest and apprehension as do law enforcement officers when called to active duty to respond to emergencies pursuant to Code Section 38-2-6, 38-2-7, 45-12-31, or 45-12-34 or pursuant to any other provision of state or federal law other than Title 10 of the United States Code. (Ga. L. 1969, p. 228, § 5; Ga. L. 2004, p. 105, § 3.)

Cross references. — Power of arrest generally, T. 17, C. 4.

ARTICLE 5

CODE OF MILITARY JUSTICE

RESEARCH REFERENCES

Am. Jur. Trials. — Court-Martial Defense by the Nonmilitary Lawyer, 45 Am. Jur. Trials 351.

PART 1

GENERAL PROVISIONS

38-2-320. Short title.

This article shall be known and may be cited and referred to as the "Georgia Code of Military Justice." (Ga. L. 1955, p. 10, § 61.12.)

38-2-321. Definitions.

As used in this article, the term:

(1) "Active state duty" means full-time military duty in the active service of the state under an order of the Governor issued pursuant to Code Section 38-2-6 or 38-2-72 and while going to and returning from such duty.

(2) "Duty status other than active duty" means any one of the types of duty described in Code Section 38-2-25 and while going to and returning from such duty.

(3) "Enlisted person" means any person who is serving in an enlisted grade in any force of the organized militia.

(4) "Law officer" means an official of a general court-martial detailed in accordance with Code Section 38-2-394.

(5) "Law specialist" means an officer of the Georgia Naval Militia designated for special duty (law).

(6) "Military court" means a court-martial, a court of inquiry, or a provost court.

(7) "Officer" means a commissioned officer including a commissioned warrant officer.

(8) "Organized militia" means the organized militia, the composition of which is stated in Code Section 38-2-2.

(9) "Staff judge advocate" or "legal officer" means an officer of the organized militia designated to perform legal duties for a command.

(10) "Superior officer" means an officer superior in rank or command. (Ga. L. 1955, p. 10, § 60.1.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 801.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 177.

38-2-322. Persons subject to article.

The following persons are subject to this article:

(1) All persons belonging to the organized militia;

(2) All persons on the state reserve list and the state retired list; and

(3) All other persons lawfully called, ordered, drafted, transferred, or inducted into, or ordered to duty in, or with, the organized militia, from the dates when they are required by the terms of the call, order, or other directive to obey the same. (Ga. L. 1955, p. 10, § 60.2.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 802.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 200.
ALR. — Civil and criminal liability of soldiers, sailors, and militiamen, 147 ALR 1429; 151 ALR 1462; 151 ALR 1463; 153 ALR 1431; 153 ALR 1432; 154 ALR 1457; 158 ALR 1462.

38-2-323. Jurisdiction to try certain personnel.

(a) Subject to Code Section 38-2-437, no person charged with having committed, while in a status in which he was subject to this article, an offense against this article, for which the person cannot be tried in the courts of a state of the United States or in the courts of the United States, shall be relieved from amenability to trial by court-martial by reason of the termination of such status.

(b) Notwithstanding subsection (a) of this Code section, but subject to subsections (c) and (d) of this Code section, a person who has been finally discharged from the organized militia, the state reserve list, or the state retired list is no longer amenable to trial by court-martial.

(c) Any person discharged from the organized militia and subsequently charged with having fraudulently obtained the discharge shall, subject to Code Section 38-2-437, be subject to trial by court-martial on the charge and, after apprehension, shall be subject to this article. Upon conviction of the charge he shall be subject to trial by court-martial for all offenses under this article committed prior to the fraudulent discharge.

(d) No person who has deserted from the organized militia shall be relieved from amenability to the jurisdiction of this article by virtue of a separation from any subsequent period of service. (Ga. L. 1955, p. 10, § 60.3.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 803.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 199.
ALR. — Civil and criminal liability of soldiers, sailors, and militiamen, 147 ALR 1429; 151 ALR 1462; 151 ALR 1463; 153 ALR 1431; 153 ALR 1432; 154 ALR 1457; 158 ALR 1462.

38-2-324. Presumption of jurisdiction.

The jurisdiction of the military courts and boards established by this article shall be presumed and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1203; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 61.10.)

38-2-325. Territorial applicability of article.

(a) This article shall be applicable in all places within the state. It shall also apply to all persons subject to this article while serving outside the state and while going to and returning from service outside the state and in like manner and to the same extent as while the persons are serving within the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside the state with the same jurisdiction and powers as if held within the state, and offenses committed outside the state may be tried and punished either outside the state or within the state. (Ga. L. 1955, p. 10, § 60.4.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 805.

RESEARCH REFERENCES

ALR. — Civil and criminal liability of soldiers, sailors, and militiamen, 147 ALR 1429; 151 ALR 1462; 151 ALR 1463; 153 ALR 1431; 153 ALR 1432; 154 ALR 1457; 158 ALR 1462.

38-2-326. Judge advocates and legal officers.

(a) The Governor, on the recommendation of the adjutant general, shall appoint an officer of the organized militia who shall be the state judge advocate. The officer shall be a member of the bar of the Supreme Court of this state and shall have been admitted to the bar of this state for a period of not less than five years.

(b) The adjutant general may appoint assistant judge advocates of such number as he shall deem necessary. Assistant state judge advocates shall be officers of the organized militia who are admitted to the bar of this state.

(c) Code Section 45-15-34 shall not be a restriction upon the appointments and duties as provided for in this Code section.

(d) The state judge advocate or his assistants shall make frequent inspections in the field in supervision of the administration of military justice in the organized militia.

(e) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice. The staff judge advocate or legal officer of any command is authorized to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command or with the state judge advocate.

(f) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case shall act subsequently as a staff judge advocate or legal officer to any reviewing authority upon the same case. (Ga. L. 1955, p. 10, § 60.5.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 806.

Part 2

Apprehension and Restraint

Cross references. — Arrest of persons generally, T.17, C. 4.

38-2-340. Apprehension.

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations issued pursuant to this chapter to apprehend persons subject to this article, any marshal of a court-martial appointed pursuant to this chapter, and any sheriff or peace officer may apprehend persons subject to this article upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) All officers, warrant officers, petty officers, and noncommissioned officers shall have authority to quell all quarrels, frays, and disorders among persons subject to this article and to apprehend persons subject to this article who take part in the same.

(d) Except as otherwise specifically provided in this chapter, no sheriff, peace officer, or marshal of a court-martial shall demand or require payment of any fee or charge of any nature for apprehending or placing in confinement any person subject to this article. (Ga. L. 1955, p. 10, § 60.6.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 807.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 207.

38-2-341. Apprehension of deserters.

Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession or the District of Columbia may summarily apprehend a deserter from the organized militia and deliver him into the custody of the organized militia. (Ga. L. 1955, p. 10, § 60.7.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 808.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 192.

C.J.S. — 6A C.J.S., Arrest, § 5 et seq.

38-2-342. Imposition of restraint.

(a) Arrest is the restraint of a person by an order not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted person may be ordered apprehended or ordered into arrest or confinement by an officer by an order, oral or written, delivered in person or through other persons subject to this article, or through any person authorized by this article to apprehend persons. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

(c) An officer or warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person shall be ordered into arrest or confinement except for probable cause.

(e) Nothing in this Code section shall be construed to limit the authority of persons authorized to apprehend offenders or to secure the

custody of an alleged offender until proper authority may be notified. (Ga. L. 1955, p. 10, § 60.8.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 809.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 207.

C.J.S. — 6A C.J.S., Arrest, § 10 et seq.

38-2-343. Restraint of persons charged with offenses.

Any person subject to this article who is charged with an offense under this article shall be ordered apprehended or ordered into arrest or confinement, as circumstances may require. When any person subject to this article is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charge and release him. (Ga. L. 1955, p. 10, § 60.9.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 810.

38-2-344. Confinement and imprisonment in civil jails.

Confinement and imprisonment other than in a guard house, whether prior to, during, or after trial by a military court, shall be executed in jails or correctional institutions designated by the Governor or by the adjutant general for that purpose. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1204; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.10; Ga. L. 1982, p. 3, § 38.)

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 221.

38-2-345. Reports and receiving of prisoners; prisoner's commanding officer notified.

(a) No provost marshal, commander of a guard, master-at-arms, or keeper or officer of a city or county jail or any other jail designated by the Governor or by the adjutant general under Code Section 38-2-344 shall refuse to receive or keep any prisoner committed to his charge when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master-at-arms, or keeper or officer of a city or county jail or any other jail designated by the Governor or by the adjutant general under Code Section 38-2-344 to whose charge a prisoner is committed, within 24 hours after the commitment or as soon as he is relieved from guard, shall report to the commanding officer of the prisoner the name of such prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment. (Ga. L. 1955, p. 10, § 60.11.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 811.

RESEARCH REFERENCES

C.J.S. — 6A C.J.S., Arrest, § 15.

38-2-346. Punishment prohibited before trial.

Subject to Code Section 38-2-462, no person, while being held for trial or the results of trial, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to ensure his presence; but he may be subjected to minor punishment during such period for infractions of discipline. (Ga. L. 1955, p. 10, § 60.12.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 813.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 216.

38-2-347. Delivery of offenders to civil authorities.

(a) Under such regulations as may be issued pursuant to this chapter, a person subject to this article who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this Code section of a person undergoing sentence of a court-martial is made to any civil authority, the delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial. After having answered to the civil authorities for his offense, the offender shall be returned, upon

the request of the adjutant general, to military custody for the completion of the court-martial sentence. (Ga. L. 1955, p. 10, § 60.13.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 814.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military, and Civil Defense, §§ 189, 190.
C.J.S. — 6A C.J.S., Arrest, § 15..
ALR. — Civil and criminal liability of soldiers, sailors, and militiamen, 147 ALR 1429; 151 ALR 1462; 151 ALR 1463; 153 ALR 1431; 153 ALR 1432; 154 ALR 1457; 158 ALR 1462.

Part 3

Nonjudicial Punishment

38-2-360. Commanding officer's nonjudicial punishment; regulations limiting; officers in charge; appeal; effect on more serious offenses.

(a) Under such regulations as may be issued pursuant to this chapter, any commanding officer, in addition to, or in lieu of, admonition or reprimand, may impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) Upon officers and warrant officers of his or her command:

(A) Withholding of privileges for a period not to exceed two consecutive weeks;

(B) Restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) If imposed by the Governor or by a general officer, fine or forfeiture of not more than one-half of one month's pay per month for two months; and

(2) Upon other military personnel of his or her command:

(A) Withholding of privileges for a period not to exceed two consecutive weeks;

(B) Restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks;

(C) Extra duties for a period not to exceed two consecutive weeks and not to exceed two hours per day, holidays included;

(D) Reduction to the next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command;

(E) If imposed upon a person attached to or embarked on a vessel, confinement for a period not to exceed seven consecutive days; or

(F) If imposed by an officer exercising special court-martial jurisdiction, fine or forfeiture of not more than one-half of one month's pay per month for two months.

(b) Under such regulations as may be issued pursuant to this chapter, limitations may be placed on the powers granted by this Code section with respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise the powers, and the applicability of this Code section to an accused on active state duty who demands trial by a court-martial.

(c) An officer in charge, for minor offenses, may impose on enlisted persons assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as may be specifically prescribed by regulations issued pursuant to this chapter.

(d) A person punished under authority of this Code section who deems his punishment unjust or disproportionate to the offense may appeal, through the proper channel, to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may be required in the meantime to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority shall have power to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges, and property affected.

(e) The imposition and enforcement of disciplinary punishment under authority of this Code section for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and which is not properly punishable under this Code section. However, the fact that a disciplinary punishment has been enforced may be shown by the accused upon the trial by court-martial and, when so shown, shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(f) Whenever a punishment of forfeiture of pay and allowances is imposed as provided in this Code section, the forfeiture may apply to pay or allowances becoming due on or after the date the punishment is imposed and to any pay and allowances accrued before such date. (Ga. L. 1955, p. 10, § 60.14; Ga. L. 1996, p. 740, § 3.)

Cross references. — Statute of limitations, § 38-2-437.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 815.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 186, 187.

PART 4

COURT-MARTIAL JURISDICTION

38-2-370. Courts-martial classified.

There shall be three kinds of courts-martial in each of the forces of the organized militia:

(1) General courts-martial, which shall consist of a law officer and any number of members not less than five;

(2) Special courts-martial, which shall consist of any number of members not less than three; and

(3) Summary courts-martial, which shall consist of one officer. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.15.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 816.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 178 et seq.

ALR. — Use of prior military conviction to establish repeat offender status, 11 ALR5th 218.

38-2-371. Jurisdiction of courts-martial; generally.

Each force of the organized militia shall have court-martial jurisdiction over all persons subject to this article. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations issued pursuant to this chapter. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1955, p. 10, § 60.16.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 817.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 186, 187.

38-2-372. General courts-martial.

Subject to Code Section 38-2-371, general courts-martial shall have jurisdiction to try persons subject to this article for any offense for which they may be punished by this article and shall have the power to sentence a defendant to:

(1) A fine of not more than $200.00;

(2) Forfeiture of pay and allowances;

(3) A reprimand;

(4) Dismissal or dishonorable discharge;

(5) Reduction of a noncommissioned officer to the ranks; or

(6) Any combination of the punishments listed in paragraphs (1) through (5) of this Code section. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.17; Ga. L. 1959, p. 114, § 2.)

Cross references. — Vesting of efficiency and medical examining boards with powers of courts of inquiry and courts-martial, § 38-2-216.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 818.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 188.

38-2-373. Special courts-martial.

Subject to Code Section 38-2-371, special courts-martial shall have jurisdiction to try persons subject to this article, except commissioned officers, for any offenses for which they may be punished by this article. Special courts-martial shall have the same powers of punishment as general courts-martial, except that a fine imposed by a special court-martial may not be more than $100.00 for a single offense. A bad conduct discharge shall not be adjudged by a special court-martial unless a complete record of the proceedings and testimony before the court has been made. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.18; Ga. L. 1959, p. 114, § 3.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 819.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 188.

38-2-374. Summary courts-martial.

(a) Subject to Code Section 38-2-371, summary courts-martial shall have jurisdiction to try persons subject to this article, except officers and warrant officers, for any offenses for which they may be punished by this article.

(b) No person on active state duty with respect to whom courts-martial have jurisdiction shall be brought to trial before a summary court-martial if he objects thereto unless, under Code Section 38-2-360, he has been permitted and has elected to refuse punishment under that Code section. Where objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under Code Section 38-2-360, trial shall be ordered by special or general court-martial, as may be appropriate.

(c) Summary courts-martial shall have the power to sentence a defendant to a fine of not more than $25.00 for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.19; Ga. L. 1959, p. 114, § 4.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 820.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 188.

38-2-375. Confinement authorized; duration determined.

All courts-martial, general, special, and summary, shall have the power to sentence a defendant to confinement in lieu of those fines authorized to be imposed; provided, however, that the sentences of confinement shall not exceed one day for each $1.00 of fine authorized. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.20.)

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 221.

38-2-376. Jurisdiction not exclusive.

The provisions of this article conferring jurisdiction upon courts-martial shall not be construed as depriving provost courts or other military tribunals of concurrent jurisdiction in respect to offenders or offenses that by statute or by the law of war may be tried by provost courts or other military tribunals. (Ga. L. 1955, p. 10, § 60.21.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 821.

Part 5

Composition of Courts-martial

38-2-390. Who may convene general courts-martial.

General courts-martial may be convened by order of the Governor. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.22.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 822.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 182.

38-2-391. Who may convene special courts-martial.

(a) Special courts-martial may be convened by:

(1) Any person who may convene a general court-martial;

(2) The commanding officer of a force of the organized militia or of a garrison, fort, camp, station, air base, or other place where members of a force of the organized militia are on duty;

(3) The commanding officer of a division, brigade, regiment, detached or separate battalion, or corresponding unit of the Army National Guard, or the State Defense Force;

(4) The commanding officer of a wing, group, detached or separate squadron, or corresponding unit of the Air National Guard;

(5) The commanding officer of any naval vessel and the commanding officer of any area, brigade, battalion, division, marine battalion, or separate marine company of the Naval Militia;

(6) The commanding officer of any separate or detached command or group of detached units of any of the forces of the organized militia placed under a single commander; or

(7) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

(b) When any such officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by such authority when deemed advisable by him. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.23; Ga. L. 1985, p. 356, § 9.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 823.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 182.

38-2-392. Who may convene summary courts-martial.

(a) Summary courts-martial may be convened by:

(1) Any person who may convene a general or special court-martial;

(2) The commanding officer of a detached or separate company or corresponding unit or other detachment of a force of the organized militia; or

(3) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

(b) When only one officer is present with a command or detachment, he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. However, summary courts-martial may be convened in any case by superior competent authority when deemed desirable by him. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.24.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 824.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 182.

38-2-393. Who may serve on courts-martial.

(a) Any officer of or on duty with the organized militia shall be eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer of or on duty with the organized militia shall be eligible to serve on general and special courts-martial for the trial of any person, other than an officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of the organized militia who is not a member of the same unit as the accused shall be eligible to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trial; but he shall serve as a member of a court only if, prior to the convening of the court, the accused personally has requested in writing that enlisted persons serve on it. After such a request, no enlisted person shall be tried by a general or special court-martial, the membership of which does not include enlisted persons in a number comprising at least one-third of the total membership of the court, unless eligible enlisted persons cannot be obtained on account of physical conditions or military exigencies. Where such persons cannot be obtained, the court may be convened and the trial held without them; but the convening authority shall make a detailed written statement to be appended to the record, stating why they could not be obtained.

(2) For the purposes of this Code section, the word "unit" means a duly organized body of the organized militia not larger than a company, squadron, division of the Naval Militia, or body corresponding to one of them.

(d)(1) When it can be avoided, no person subject to this article shall be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall appoint as members thereof such persons as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No person shall be eligible to sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. If within the command of the convening authority there is present and not

otherwise disqualified an officer who is a member of the bar of this state and of appropriate rank, the convening authority shall appoint the officer as president of a special court-martial; provided, however, that, although this requirement shall be binding on the convening authority, failure to follow it in any case shall not divest a military court of jurisdiction. (Ga. L. 1955, p. 10, § 60.25.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 825.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 183.

38-2-394. Law officer of general court-martial.

(a) The authority convening a general court-martial shall appoint as law officer thereof an officer who is a member of the bar of this state. No person shall be eligible to act as law officer in a case when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer shall not consult with the members of the court, other than on the form of the findings as provided in Code Section 38-2-433, except in the presence of the accused, trial counsel, and defense counsel; nor shall he vote with the members of the court. (Ga. L. 1955, p. 10, § 60.26.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 826.

38-2-395. Appointment of trial counsel and defense counsel.

(a) For each general and special court-martial the authority convening the court shall appoint a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate. No person who has acted as investigating officer, law officer, or court member in any case shall act subsequently as trial counsel or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case for the prosecution.

(b) Any person who is appointed as trial counsel or defense counsel in the case of a general court-martial must be a member of the bar of the highest court of a state of the United States.

(c) In the case of a special court-martial:

(1) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel appointed by the convening authority shall be a person similarly qualified; and

(2) If the trial counsel is a judge advocate, or a law specialist, or a member of the bar of the highest court of a state of the United States, the defense counsel appointed by the convening authority shall also be one of the foregoing. (Ga. L. 1955, p. 10, § 60.27.)

Cross references. — Right of counsel, U.S. Const., amend. 6 and Ga. Const., 1983, Art. I, Sec. I, Para. XIV. Attorneys generally, T. 15, C. 19.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 827.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 212.

38-2-396. Appointment of reporters and interpreters.

Under such regulations as the adjutant general may prescribe, the convening authority of a military court shall appoint qualified court reporters who shall record the proceedings of and testimony taken before the court. Under like regulations, the convening authority of a military court may appoint an interpreter who shall interpret for the court. (Ga. L. 1955, p. 10, § 60.28.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 828.

38-2-397. Absent and additional members.

(a) No member of a general or special court-martial shall be absent or excused after the accused has been arraigned, except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel.

(c) Whenever a special court-martial is reduced below three members, the trial shall not proceed unless the convening authority appoints

new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence had previously been introduced unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel. (Ga. L. 1955, p. 10, § 60.29.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 829.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 183.

PART 6

PRETRIAL PROCEDURE

Cross references. — Pretrial proceedings in criminal cases generally, T. 17, C. 7.

38-2-410. Charges and specifications.

(a) Charges and specifications shall be signed by a person subject to this article under oath before a person authorized by this chapter to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That the same are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline; and the person accused shall be informed of the charges against him as soon as practicable. (Ga. L. 1955, p. 10, § 60.30.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 830.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 208.

38-2-411. Compulsory self-incrimination prohibited.

(a) No person subject to this article shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this article shall interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this article shall compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this Code section or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial. (Ga. L. 1955, p. 10, § 60.31.)

Cross references. — Rights of accused, U.S. Const., amend. 5 and Ga. Const., 1983, Art. I, Sec. I, Para. XVI.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 831.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 185.

ALR. — Coercive conduct by private person as affecting admissibility of confession under state statutes or constitutional provisions — post-Connelly cases, 48 ALR5th 555.

38-2-412. Investigation; cross-examination; effect of failure to perform.

(a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiries as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at the investigation by counsel. Upon his own request he shall be represented by civilian counsel if such counsel is reasonably available, or by counsel appointed by the officer exercising general court-martial jurisdiction over the command. At the investiga-

tion full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted prior to the time the accused is charged with the offense and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Code section, no further investigation of that charge is necessary under this Code section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this Code section shall be binding on all persons administering this article, but failure to follow them in any case shall not divest a military court of jurisdiction. (Ga. L. 1955, p. 10, § 60.32.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 832.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 209, 212.

38-2-413. Forwarding of charges.

When a person is held for trial by general court-martial, the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward through channels the charges, together with the investigation and allied papers, to the Governor. If the same is not practicable, he shall report in writing to the Governor the reasons for delay. (Ga. L. 1955, p. 10, § 60.33.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 833.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 208.

38-2-414. Advice of state judge advocate and reference for trial; corrections.

(a) The Governor, before directing the trial of any charge by general court-martial, shall refer the charges and all allied papers to the state judge advocate for consideration and advice. The state judge advocate shall not recommend a general court-martial unless he has found that the charge alleges an offense under this article and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and such changes in the charges and specifications as are needed to make them conform to the evidence may be made. (Ga. L. 1955, p. 10, § 60.34.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 834.

38-2-415. Service of charges; time period before trial.

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which the trial is to be had. In time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of the charges upon him, or before a special court-martial within a period of three days subsequent to the service of the charges upon him. (Ga. L. 1955, p. 10, § 60.35.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 835.

Part 7

Trial Procedures

Cross references. — Conduct of criminal trials generally, T. 17, C. 8.

38-2-430. Governor may prescribe rules and regulations; conform to federal practice, if practicable.

The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor by regulations issued pursuant to this chapter which shall apply, so far as he deems practicable, the forms and modes of procedure, the principles of law, and the rules of evidence generally recognized in the trial of cases in the courts-martial of the United States, but which shall not be contrary to or inconsistent with this article. (Ga. L. 1955, p. 10, § 60.36.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 836.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 206.

38-2-431. Unlawfully influencing action of court.

No authority convening a general, special, or summary court-martial nor any other commanding officer shall censure, reprimand, or admonish such court or any member, law officer, or counsel thereof with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this article shall attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to his judicial acts. (Ga. L. 1955, p. 10, § 60.37.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 837.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 185.

38-2-432. Duties of trial and defense counsel; defense brief forwarded with record; assistant counsel.

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the state and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused shall have the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel duly appointed pursuant to Code Section 38-2-395. Should the accused have counsel of his own selection, the duly appointed defense counsel and assistant defense counsel, if any, shall act as his associate counsel if the accused so desires; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel, in the event of conviction, may forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he may deem appropriate.

(d) Under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Code Section 38-2-395, an assistant trial counsel of a general court-martial may perform any duty imposed by law, regulations, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) Under the direction of the defense counsel or when he is qualified to be a defense counsel as required by Code Section 38-2-395, an assistant defense counsel of a general or special court-martial may perform any duty imposed by law, regulations, or the custom of the service upon counsel for the accused. (Ga. L. 1955, p. 10, § 60.38.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 838.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 212.

38-2-433. Sessions; vote of court; findings; presence of defendant, counsel, or law officer.

Whenever a general or special court-martial is to deliberate or vote, only the members of the court shall be present. After a general court-martial has finally voted on the findings, the court may request

the law officer and the reporter to appear before the court to put the findings in proper form, and the proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in general court-martial cases, the law officer. (Ga. L. 1955, p. 10, § 60.39.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 839.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 206.

38-2-434. Continuances.

A court-martial may grant, for reasonable cause, a continuance to any party for such time and as often as may appear to be just. (Ga. L. 1955, p. 10, § 60.40.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 840.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 206.

ALR. — Effect of war on litigation pending at the time of its outbreak, 137 ALR 1335; 147 ALR 1298; 148 ALR 1384; 149 ALR 1451; 149 ALR 1452; 150 ALR 1417; 150 ALR 1418; 151 ALR 1453; 152 ALR 1450; 154 ALR 1447.

38-2-435. Challenges; order of presentation; peremptory challenges.

(a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel ordinarily shall be presented and decided before those by the accused are offered.

(b) Each accused and trial counsel shall be entitled to one peremptory challenge, but the law officer shall not be challenged except for cause; and, if the president of a special court-martial is a member of the bar of this state, he shall not be challenged except for cause. (Ga. L. 1955, p. 10, § 60.41.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 841.

Law reviews. — For note, "Toward an Integrated Rule Prohibiting All Race-Based Peremptory Challenges: Some Considerations on Georgia v. McCollum," see 26 Ga. L. Rev. 503 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 206.

38-2-436. Oaths.

(a) The law officer, all interpreters, and, in general and special courts-martial, the members, the trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and the reporter shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(b) All witnesses before military courts shall be examined on oath or affirmation. (Ga. L. 1955, p. 10, § 60.42.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 842.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military, and Civil Defense, § 206.

38-2-437. Statute of limitations.

(a) A person charged with desertion or absence without leave in time of war or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this Code section, a person charged with desertion in time of peace or any of the offenses punishable under Code Sections 38-2-550 and 38-2-551 shall not be liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Code section, a person charged with any offense shall not be liable to be tried by court-martial or punished under Code Section 38-2-360 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under Code Section 38-2-360.

(d) Periods in which the accused was absent from territory in which the state has the authority to apprehend him or was in the custody of civil authorities or in the hands of the enemy shall be excluded in computing the period of limitation prescribed in this Code section. (Ga. L. 1955, p. 10, § 60.43; Ga. L. 1959, p. 114, § 5.)

Cross references. — Limitations on criminal prosecutions generally, T. 17, C. 3.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 843.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 215.

ALR. — Burden on state to show that crime was committed within limitation period, 13 ALR 1446.

38-2-438. Former jeopardy.

(a) Without his consent, no person shall be tried a second time by a civil court or a military court of the state for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this Code section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, subsequent to the introduction of evidence but prior to a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused shall be a trial in the sense of this Code section. (Ga. L. 1955, p. 10, § 60.44.)

Cross references. — Rights of accused in criminal proceedings, U.S. Const., amend. 5 and Ga. Const., 1983, Art. I, Sec. I, Para. XVIII.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 844.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 210, 211.

38-2-439. Pleas of accused; when plea not guilty.

If an accused arraigned before a court-martial makes any irregular pleading or, after a plea of guilty, sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record and

the court shall proceed as though he had pleaded not guilty. (Ga. L. 1955, p. 10, § 60.45.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 845.

38-2-440. Opportunity to obtain witnesses and other evidence.

The trial counsel, defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with regulations issued by the Governor pursuant to this chapter. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and to any other state in which the court-martial may be sitting. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1955, p. 10, § 60.46.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 846.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 214.

38-2-441. Process and mandates of military courts; who may issue; execution.

(a) Military courts are empowered to issue all process and mandates necessary and proper to carry into full effect the powers vested in the courts. The courts shall have power to issue subpoenas for the attendance of witnesses and subpoenas for the production of documentary evidence and to enforce by attachment attendance of witnesses and production of books, records, and other documentary evidence.

(b) Such process and mandates may be issued by summary courts-martial, provost courts, and the president of other military courts; may be directed to and may be executed by any sheriff, the marshals of the military court, or any peace officer; and shall be in such form as may be prescribed by regulations issued pursuant to this chapter.

(c) It shall be the duty of all officers to whom process or mandate may be so directed to execute the same and make return of their acts thereunder according to the requirements of the same. Except as otherwise specifically provided in this chapter, no such officer shall demand or require payment of any fee or charge of any nature for

receiving, executing, or returning any process or mandate or for any services in connection therewith. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 61.7.)

38-2-442. Refusal to appear or testify; penalty.

Every person not subject to this article who:

(1) Has been subpoenaed to appear as a witness or to produce books and records before any military court or before any military or civil officer designated to take a deposition to be read in evidence before a military court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the superior courts of the state; and

(3) Willfully neglects or refuses to appear or refuses to qualify as a witness or to testify or to produce any evidence which the person may have been duly subpoenaed to produce

shall be deemed guilty of an offense against the state and may be punished by the military court which issued the subpoena or subpoena for the production of documentary evidence in the same manner and to the same extent as provided for the failure to appear, refusal to qualify as a witness or to testify, or refusal or failure to produce any evidence which the person may have been duly subpoenaed to produce, as provided in actions or proceedings in the superior courts of the state. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1955, p. 10, § 60.47.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 847.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 214.

38-2-443. Contempts, penalty.

A military court may punish for contempt any person who uses menacing words, signs, or gestures in its presence or who disturbs its proceedings by any riot or disorder. The punishment shall not exceed confinement for 30 days or a fine of $100.00, or both. (Ga. L. 1955, p. 10, § 60.48.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 848.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 214.

38-2-444. Depositions.

(a) At any time after charges have been signed as provided in Code Section 38-2-410, any party may take oral or written depositions unless an authority competent to convene a court-martial for the trial of the charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate officers to represent the prosecution and the defense and may authorize the officers to take the depositions of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of this state or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, insofar as it is otherwise admissible under the rules of evidence, may be read into evidence before any court-martial or in any proceeding before a court of inquiry, if it appears:

(1) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of trial or hearing;

(2) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) That the present whereabouts of the witness are unknown. (Ga. L. 1955, p. 10, § 60.49.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 849.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 206.

38-2-445. Admissibility of records of courts of inquiry.

(a) In any case not extending to the dismissal of an officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained may, if otherwise admissible under the rules of evidence, be read into evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of the evidence.

(b) The testimony may be read into evidence only by the defense in cases extending to the dismissal of an officer.

(c) The testimony may also be read into evidence before a court of inquiry or a military board. (Ga. L. 1955, p. 10, § 60.50.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 850.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 214.

38-2-446. Voting, rulings, and charge.

(a) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who shall announce forthwith the result of the ballot to the members of the court.

(b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial or by the president of a special court-martial who is a member of the bar of this state upon any interlocutory question other than a motion for a finding of not guilty, or the question of the accused's sanity, shall be final and shall constitute the ruling of the court. However, the law officer or president may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and

the question decided by a vote as provided in Code Section 38-2-447, viva voce, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court-martial and the president of a special court-martial, in the presence of the accused and counsel, shall instruct the court as to the elements of the offense and charge the court:

(1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

(2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

(3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state. (Ga. L. 1955, p. 10, § 60.51; Ga. L. 1959, p. 114, § 6.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 851.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 206.

38-2-447. Number of votes required.

(a) No person shall be convicted of any offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge shall disqualify the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity shall be a determination against the accused. A tie vote on any other question shall be a determination in favor of the accused. (Ga. L. 1955, p. 10, § 60.52.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 852.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 183, 216.

38-2-448. Court to announce action.

Every court-martial shall announce its findings and sentence to the parties as soon as determined. (Ga. L. 1955, p. 10, § 60.53.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 853.

38-2-449. Record of trial; contents; authentication; given to accused.

(a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it, and the record shall be authenticated by the signature of the president and the law officer. In case the record cannot be authenticated by either the president or the law officer, by reason of the death, disability, or absence of such officer, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable for such reasons, the record shall be authenticated by two members.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations issued pursuant to this chapter.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated. (Ga. L. 1955, p. 10, § 60.54.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 854.

Part 8

Sentences

Cross references. — Sentence and punishment for criminal conviction generally, Ch. 10, T. 17.

38-2-460. Cruel and unusual punishments prohibited; use of irons.

Punishment by flogging or by branding, marking, or tattooing on the body or any other cruel or unusual punishment shall not be adjudged by any court-martial or inflicted upon any person subject to this article. The use of irons, single or double, except for the purpose of safe custody, is prohibited. (Ga. L. 1955, p. 10, § 60.55.)

Cross references. — Cruel and unusual punishment, U.S. Const., amend. 8 and Ga. Const., 1983, Art. I, Sec. I, Para. XIV. Prohibition against whipping as punishment for crime, Ga. Const. 1983, Art. I, Sec. I, Para. XVIII.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 855.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 218.

38-2-461. Maximum limits.

The punishment which a court-martial may direct for an offense shall not exceed the limits prescribed by this article. (Ga. L. 1955, p. 10, § 60.56.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 856.

38-2-462. Effective date of sentences.

(a) Whenever a sentence of a court-martial, as lawfully adjudged and approved, includes a forfeiture of pay and allowances in addition to confinement not suspended, the forfeiture may apply to pay and allowances becoming due on or after the date such sentence is approved by the convening authority and to any pay and allowance accrued before such date.

(b) Any period of confinement included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement. Regulations adopted pursuant to this chapter may provide that sentences of confinement shall not be executed until approved by such officers as may be designated in such regulations.

(c) All other sentences of court-martial shall become effective on the date ordered executed. (Ga. L. 1955, p. 10, § 60.57.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 857.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 218, 220.

38-2-463. Execution of confinement; discipline while in civil jails; hard labor; civil confinement according to law.

(a) Any sentence or punishment adjudged by a military court, whether or not the sentence or punishment includes discharge or dismissal and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the organized militia, or in any jail or correctional institution designated for that purpose as prescribed in Code Section 38-2-344. Persons confined in a jail or correctional institution shall be subject to the same discipline and treatment as persons confined or committed to jail or correctional institution by the courts of the state or of any political subdivision thereof.

(b) The omission of the words "hard labor" in any sentence or punishment of a court-martial adjudging confinement shall not be construed as depriving the authority executing the sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, and wardens of all city or county jails and of all other jails or correctional institutions designated by the Governor or by the adjutant general pursuant to Code Section 38-2-344 shall receive the bodies of persons ordered into confinement prior to trial and of persons committed to confinement by the process or mandate of a military court and shall confine them according to law. No keeper, officer, or warden shall demand or require payment of any fee or charge of any nature for receiving or confining a person in the jail or correctional institution. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1204; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 60.58; Ga. L. 1982, p. 3, § 38.)

Cross references. — Conditions of detention of prison inmates generally, § 42-5-50 et seq.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 858.

38-2-464. Payment of fines; disposition.

All fines and penalties assessed by any courts-martial shall be collected by execution issued under the hand of the president of the

court, directed to the sheriff and returnable to the county in which the delinquent resides, and shall have the same force and effect as a civil process of the same character. All moneys collected from fines and forfeitures shall be paid into the military fund, except those collected by the execution of summary court-martial which shall be paid into the unit fund of the unit of which the convicted person is a member. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1206; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 61.8.)

Part 9

Review of Courts-martial

38-2-480. Effect of error of law; lesser included offense.

(a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the findings as includes a lesser included offense. (Ga. L. 1955, p. 10, § 60.66.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 859.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 222.

ALR. — Review by civil courts of court-martial convictions, 15 ALR2d 387.

Review by federal civil courts of court-martial convictions—modern cases, 95 ALR Fed. 472.

38-2-481. Initial action on the record — Reviewing authority.

After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, by an officer commanding for the time being, by a successor in command, or by the Governor. (Ga. L. 1955, p. 10, § 60.60.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 860.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 222.

38-2-482. Initial action on the record — General court-martial records; judge advocate's opinion; effect of acquittal.

After trial, the record of a general court-martial shall be referred to the state judge advocate who shall submit his written opinion thereon to the Governor. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to the question of jurisdiction. (Ga. L. 1955, p. 10, § 60.61.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 861.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 222.

38-2-483. Reconsideration and revision; limitations and exceptions.

(a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(1) For reconsideration of a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(2) For reconsideration of a finding of not guilty of any charge unless the record shows a finding of guilty under a specification laid under that charge which sufficiently alleges a violation of some Code section of this article; or

(3) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory. (Ga. L. 1955, p. 10, § 60.62.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 862.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 222.

38-2-484. Rehearings; grounds; members of court; effect on sentence.

(a) If the convening authority disapproves the findings and sentence of a court-martial, he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing, in which case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Every rehearing shall take place before a court-martial composed of members who were not members of the court-martial which first heard the case. Upon the rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court-martial; and no sentence in excess of or more severe than the original sentence shall be imposed unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory. (Ga. L. 1955, p. 10, § 60.63.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 863.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military, and Civil Defense, §§ 227, 229.

38-2-485. Approval by convening authority.

In acting on the findings and sentence of a court-martial, the convening authority shall approve only such findings of guilty and the sentence or such part or amount of the sentence as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence shall constitute approval of the findings and sentence. (Ga. L. 1955, p. 10, § 60.64.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 864.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 222.

38-2-486. Disposition of records after review by convening authority; review by state judge advocate; powers; boards of review; composition.

(a) When the convening authority is the Governor, his action on the review of any record of trial shall be final.

(b) In all other cases:

(1) Where the sentence of a special court-martial as approved by the convening authority includes a bad conduct discharge, whether or not suspended, the record shall be forwarded to the appropriate staff judge advocate or legal officer of the appropriate force of the organized militia to be reviewed in the same manner as a record of trial by general court-martial, after which the entire record with the opinion of the staff judge advocate or legal officer shall be forwarded to the state judge advocate for review;

(2) All other special and summary court-martial records shall be forwarded to the appropriate staff judge advocate or legal officer of the appropriate force of the organized militia and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations issued pursuant to this chapter.

(c) The state judge advocate shall review the record of trial in every case forwarded to him for review as provided in this Code section. If the final action of the court-martial in any case forwarded to the state judge advocate has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate shall be limited to the question of jurisdiction.

(d) In all cases reviewable by the state judge advocate under this Code section, the state judge advocate shall take final action.

(e) In any case reviewable by the state judge advocate under this Code section, the state judge advocate shall have authority to:

(1) Act only with respect to the findings and sentence as approved by the convening authority;

(2) Affirm only such findings of guilty, and the sentence or such part or amount of the sentence as he finds correct in law and fact, which he determines on the basis of the entire record should be approved;

(3) Weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses;

(4) Order a rehearing if he sets aside the findings and sentence, except where the setting aside is based on lack of sufficient evidence to support the findings;

(5) Order that the charges be dismissed if he sets aside the findings and sentence and does not order a rehearing.

(f) In cases reviewable by the state judge advocate under this Code section, he shall instruct the convening authority to take action in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The state judge advocate may constitute one or more boards of review, each composed of not less than three officers of the organized militia or on the state reserve list or state retired list, each of whom shall be a member of the bar of this state, which board or boards of review shall review the record of any trial by special court-martial referred to it by the state judge advocate. The boards of review shall have the same authority and powers on the review of a record as the state judge advocate has under this Code section. (Ga. L. 1955, p. 10, § 60.65.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 865.

RESEARCH REFERENCES

ALR. — Review by civil courts of court-martial convictions, 15 ALR2d 387.

Review by federal civil courts of court-martial convictions—modern cases, 95 ALR Fed. 472.

38-2-487. Review counsel; when furnished; civilian attorney.

(a) Upon the final review of a sentence of a general court-martial or of a sentence to a bad conduct discharge, the accused shall have the right to be represented by counsel before the reviewing authority, the staff judge advocate, or legal officer, as the case may be, and before the state judge advocate.

(b) Upon the request of an accused who is entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the organized militia or on the state reserve list or the state retired list, if available, to represent the accused before the reviewing authority, the staff judge advocate, or legal officer, as the case may be,

and before the state judge advocate, in the review of cases specified in subsection (a) of this Code section.

(c) An accused who is entitled to be so represented may be represented before the reviewing authority, the staff judge advocate, or legal officer, as the case may be, and before the state judge advocate by civilian counsel, if provided by him. (Ga. L. 1955, p. 10, § 60.67.)

RESEARCH REFERENCES

ALR. — Review by civil courts of court-martial convictions, 15 ALR2d 387.
Review by federal civil courts of court-martial convictions—modern cases, 95 ALR Fed. 472.

38-2-488. Execution of sentence; suspension of sentence.

All court-martial sentences, unless suspended, may be ordered executed by the convening authority when approved by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit and may suspend the execution of the sentence or any part of the sentence as approved by him. (Ga. L. 1955, p. 10, § 60.59.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 871.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 226.

38-2-489. Vacation of suspension; records; who may vacate.

(a) Prior to the vacation of the suspension of a special court-martial sentence which, as approved, includes a bad conduct discharge or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. If he so desires, the probationer shall be represented at the hearing either by counsel provided by him or by counsel provided for him at his request in the same manner as specified in Code Section 38-2-487.

(b) The record of the hearing and the recommendations of the officer having special court-martial jurisdiction shall be forwarded for action to the Governor in cases involving a general court-martial sentence and, in all other cases under subsection (a) of this Code section, to the commanding officer of the force of the organized militia of which the probationer is a member. If the Governor or the commanding officer

vacates the suspension, the vacation shall be effective to execute any unexecuted portion of the sentence except a dismissal.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence. (Ga. L. 1955, p. 10, § 60.68.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 872.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 226.

38-2-490. Petition for new trial; time period; grounds.

At any time within one year after approval by the convening authority of a court-martial sentence which extends to dismissal or a dishonorable or bad conduct discharge, the accused may petition the Governor for a new trial on grounds of newly discovered evidence or fraud on the court-martial. (Ga. L. 1955, p. 10, § 60.69.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 873.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 228, 229.

38-2-491. Remission or suspension of sentence; modification of type of discharge by Governor.

(a) A convening authority may remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures.

(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. (Ga. L. 1955, p. 10, § 60.70.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 874.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 226, 229.

38-2-492. Restoration of rights, privileges, and property, in event of remission; administrative discharge; reinstatement.

(a) Under such regulations as may be prescribed pursuant to this chapter, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed portion is included in a sentence imposed upon the new trial or rehearing.

(b) Where a previously executed sentence of dishonorable or bad conduct discharge is not sustained on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out of the remainder of his enlistment.

(c) Where a previously executed sentence of dismissal is not sustained on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance; and the officer dismissed by the sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor the former officer would have attained had he not been dismissed. The reappointment of a former officer may be made provided a position vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as service for all purposes. (Ga. L. 1955, p. 10, § 60.71.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 875.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 226.

38-2-493. Finality of proceedings, findings, and sentences; binding effect.

The proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this article, and all dismissals and discharges carried into execution pursuant to sentences by

courts-martial following review and approval, as required by this article, shall be final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to the proceedings shall be binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in Code Section 38-2-490. (Ga. L. 1955, p. 10, § 60.72.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 876.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 229.

PART 10

PUNITIVE PROVISIONS

38-2-510. Principals.

Any person subject to this article who:

(1) Commits an offense punishable by this article or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this article

is a principal. (Ga. L. 1955, p. 10, § 60.73.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 877.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 120, 122 et seq.

38-2-511. Accessory after the fact.

Any person subject to this article who, knowing that an offense punishable by this article has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.74.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 878.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 117.

ALR. — Charge of harboring or concealing or assisting one charged with crime to avoid arrest, predicated upon financial assistance, 130 ALR 150.

38-2-512. Conviction of lesser included offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit the offense charged or of an attempt to commit an offense necessarily included therein. (Ga. L. 1955, p. 10, § 60.75.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 879.

38-2-513. Attempts.

(a) An act, done with specific intent to commit an offense under this article, amounting to more than mere preparation and tending but failing to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this article who attempts to commit any offense punishable by this article shall be punished as a court-martial may direct unless otherwise specifically prescribed.

(c) Any person subject to this article may be convicted of an attempt to commit an offense although it appears at the trial that the offense was consummated. (Ga. L. 1955, p. 10, § 60.76.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 880.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 100 et seq.

38-2-514. Conspiracy.

Any person subject to this article who conspires with any other person or persons to commit an offense under this article shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.77.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 881.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 124. 53A Am. Jur. 2d, Military and Civil Defense, § 211.

38-2-515. Solicitation of desertion, mutiny, misbehavior before the enemy, or sedition.

(a) Any person subject to this article who solicits or advises another or others to desert in violation of Code Section 38-2-518 or mutiny in violation of Code Section 38-2-527 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense; but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this article who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Code Section 38-2-532 or sedition in violation of Code Section 38-2-527 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense; but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.78.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 882.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 103, 104.

38-2-516. Fraudulent enlistment, appointment, or separation.

Any person who:

(1) Procures his own enlistment or appointment in the organized militia by means of knowingly false representations or deliberate concealment as to his qualifications for such enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the organized militia by means of knowingly false representations or deliberate concealment as to his eligibility for such separation

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.79.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 883.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 195.

38-2-517. Unlawful enlistment, appointment, or separation.

Any person subject to this article who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to him to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.80.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 884.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 195.

38-2-518. Desertion.

(a) Any member of the organized militia who:

(1) Without proper authority goes or remains absent from his unit, organization, or place of duty with intent to remain permanently away therefrom;

(2) Quits his unit or organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the forces of the organized militia enlists or accepts an appointment in the same or another one of the forces of the organized militia without fully disclosing the fact that he has not been so regularly separated

commits the offense of desertion.

(b) Any officer of the organized militia who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to remain permanently away therefrom commits the offense of desertion.

(c) Any person found guilty of desertion or attempted desertion shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.81.)

Cross references. — Statute of limitations, § 38-2-437.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 885.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 192.

38-2-519. Absence without leave.

Any person subject to this article who, without proper authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or other place of duty at which he is required to be at the time prescribed

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.82.)

Cross references. — Statute of limitations, § 38-2-437.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 886.

38-2-520. Missing movement of ship, aircraft, or unit.

Any person subject to this article who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.83.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 887.

38-2-521. Contempt towards officials.

Any person subject to this article who uses contemptuous words against the President, the Governor, or the General Assembly shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.84.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 888.

38-2-522. Disrespect towards superior officer.

Any person subject to this article who behaves with disrespect towards his superior officer shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.85.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 889.

38-2-523. Assaulting or willfully disobeying officer.

Any person subject to this article who:

(1) Strikes his superior officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) Willfully disobeys a lawful command of his superior officer

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.86.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 890.

38-2-524. Insubordinate conduct toward warrant or noncommissioned officer.

Any warrant officer or enlisted person who:

(1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer while such officer is in the execution of his office;

(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer while such officer is in the execution of his office

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.87.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 891.

38-2-525. Failure to obey order or regulation.

Any person subject to this article who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the same; or

(3) Is derelict in the performance of his duties

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.88.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 892.

38-2-526. Cruelty and maltreatment.

Any person subject to this article who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his order shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.89.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 893.

38-2-527. Mutiny or sedition.

(a) Any person subject to this article who:

(1) With intent to usurp or override lawful military authority, refuses, in concert with any other person or persons, to obey orders or otherwise do his duty or creates any violence or disturbance commits the offense of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person or persons, revolt, violence, or other disturbance against such authority commits the offense of sedition;

(3) Fails to do his utmost to prevent and suppress an offense of mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior or commanding officer of an offense of mutiny or sedition which he knows or has reason to believe is taking place, commits the offense of failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.90.)

Cross references. — Treason and other subversive activities, § 16-11-1 et seq. Statute of limitations, § 38-2-437.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 894.

38-2-528. Resistance, breach of arrest, and escape.

Any person subject to this article who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.91.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 895.

38-2-529. Releasing prisoner without proper authority.

Any person subject to this article who, without proper authority, releases any prisoner duly committed to his charge or who through neglect or design suffers any such prisoner to escape shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.92.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 896.

38-2-530. Unlawful detention.

Any person subject to this article who, except as provided by law or regulations, apprehends, arrests, or confines any person shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.93.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 897.

38-2-531. Noncompliance with procedural rules; unnecessary delay.

Any person subject to this article who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this article; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this article regulating the proceedings before, during, or after trial of an accused

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.94.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 898.

38-2-532. Misbehavior before the enemy.

Any person subject to this article who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away his arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits his place of duty to plunder or pillage;

(7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the organized militia;

(8) Willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, or to any other state or to the organized militia when engaged in battle

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.95.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 899.

38-2-533. Subordinate compelling surrender.

Any person subject to this article who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces of the United States or of any other state, or of the organized militia, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without

proper authority, shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.96.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 900.

38-2-534. Improper use of countersign or parole.

Any person subject to this article who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.97.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 901.

38-2-535. Forcing a safeguard.

Any person subject to this article who forces a safeguard shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.98.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 902.

38-2-536. Captured or abandoned property; trading and looting prohibited.

(a) All persons subject to this article shall secure all public property taken from the enemy for the service of the United States and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this article who:

(1) Fails to carry out the duties prescribed in subsection (a) of this Code section;

(2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) Engages in looting or pillaging

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.99.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 903.

38-2-537. Aiding the enemy.

Any person subject to this article who:

(1) Aids or attempts to aid the enemy with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with, or holds any intercourse with, the enemy, either directly or indirectly

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.100.)

Cross references. — Statute of limitations, § 38-2-437.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 904.

38-2-538. Misconduct as prisoner of war.

Any person subject to this article who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his captors, acts without proper authority in a manner contrary to law, custom, or regulation to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons, maltreats them without justifiable cause

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.101.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 905.

38-2-539. False official statements.

Any person subject to this article who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement, knowing the same to be false, shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.102.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 907.

38-2-540. Military property; loss, damage, destruction, or wrongful disposition.

Any person subject to this article who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Willfully or through neglect damages, destroys, or loses; or

(3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of

any military property of the United States or of the state, shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.103.)

Cross references. — Interference with government property, § 16-7-24.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 908.

38-2-541. Property other than military property; waste, spoilage, or destruction.

Any person subject to this article who, while on active state duty or in a duty status other than active state duty, willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.104.)

Cross references. — Procedure for complaint alleging willful damage to property by members of organized militia, § 38-2-576.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 909.

38-2-542. Personal property of another; taking with intent to steal; dollar limit.

Any person subject to this article, while on active state duty or in a duty status other than active state duty, who shall wrongfully and fraudulently take and carry away the personal goods of another, of a value not exceeding $200.00, with intent to steal the same, shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.105.)

38-2-543. Improper hazarding of vessel; willful or negligent.

(a) Any person subject to this article who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the

United States or of the organized militia shall be punished as a court-martial may direct.

(b) Any person subject to this article who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the organized militia shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.106.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 910.

38-2-544. Drunken or reckless driving.

Any person subject to this article who, while on active state duty or in a duty status other than active state duty, operates any vehicle while drunk or in a reckless or wanton manner shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.107.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 911.

JUDICIAL DECISIONS

Sufficiency of indictment. — Indictment for reckless driving and driving under the influence, taken as a whole, was sufficient. Hassell v. State, 212 Ga. App. 432, 442 S.E.2d 261 (1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 271 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1354 et seq., 1382 et seq.

38-2-545. Drunk on duty; misbehavior while standing his post.

Any person subject to this article who is found drunk on duty, drunk or sleeping upon his post, or who leaves his post before he is regularly relieved shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.108.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. §§ 912, 913.

38-2-546. Dueling.

Any person subject to this article who, while on active state duty or in a duty status other than active state duty, fights or promotes, or is

concerned in or connives at fighting a duel or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.109.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 914.

38-2-547. Malingering; feigning illness; self-infliction of injury.

Any person subject to this article who, for the purpose of avoiding work, duty, or service in the militia:

(1) Feigns illness, physical disablement, mental lapse, or derangement; or

(2) Intentionally inflicts self-injury

shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.110.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 915.

38-2-548. Riot or breach of peace.

Any person subject to this article who, while on active state duty or in a duty status other than active state duty, causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.111.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 916.

38-2-549. Provoking words or gestures.

Any person subject to this article who, while on active state duty or in a duty status other than active state duty, uses provoking or reproachful words or gestures towards any other person subject to this article shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.112.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 917.

38-2-550. Perjury.

Any person subject to this article who, in a judicial proceeding or court of justice conducted pursuant to this article, willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry commits the offense of perjury and shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.113.)

Cross references. — Statute of limitations, § 38-2-437.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 931.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military, and Civil Defense, § 216. 60A Am. Jur. 2d, Perjury, § 1 et seq.

C.J.S. — 70 C.J.S., Perjury, § 1 et seq.

38-2-551. Frauds against the government.

Any person subject to this article who:

(1) Knowing it to be false or fraudulent:

(A) Makes any claim against the United States, the state, or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, the state, or any officer thereof;

(2) For the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:

(A) Makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements;

(B) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited;

(3) Having charge, possession, custody, or control of any money or other property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(4) Being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state

upon conviction thereof, shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.114.)

Cross references. — Statute of limitations, § 38-2-437.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 932.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 216, 252.

C.J.S. — 37 C.J.S., Fraud, §§ 1 et seq., 184 et seq.

ALR. — False pretense: presentation of and attempt to establish fraudulent claim against governmental agency, 21 ALR 180.

38-2-552. Conduct unbecoming officer and gentleman.

Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct. (Ga. L. 1955, p. 10, § 60.115.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 933.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, §§ 186, 187.

38-2-553. General provision.

Though not specifically mentioned in this article, all disorders and neglects to the prejudice of good order and discipline in the organized militia, of which persons who are subject to this article may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court. (Ga. L. 1955, p. 10, § 60.116.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 934.

PART 11

MISCELLANEOUS PROVISIONS

38-2-570. Courts of inquiry; composition; parties; report.

(a) Courts of inquiry to investigate any matter may be convened by the Governor or by any other person designated by the Governor for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry shall consist of three or more officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this article whose conduct is subject to inquiry shall be designated as a party. Any person subject to this article or employed in the Military Division, Department of Defense, who has a direct interest in the subject of inquiry shall have the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and shall have the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to perform faithfully their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president; and, if the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1201; Ga. L. 1955, p. 10, § 61.1.)

Cross references. — Vesting of efficiency and medical examining boards with powers of courts of inquiry and courts-martial, § 38-2-216.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 935.

38-2-571. Authority to administer oaths; limitations; effect of signature.

(a) The following officers of the organized militia shall have the power to administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for such purposes before the officers:

(1) All judge advocates of the Army National Guard, Air National Guard, and State Defense Force;

(2) All law specialists;

(3) All summary courts-martial;

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(5) All staff judge advocates and legal officers and acting or assistant staff judge advocates and legal officers; and

(6) All other persons designated by regulations issued pursuant to this chapter.

(b) The following officers of the organized militia shall have the power to administer oaths necessary in the performance of their duties, and affidavits may be taken for such purposes before the officers:

(1) The president, law officer, trial counsel, and assistant trial counsel for all general and special courts-martial;

(2) The president and the counsel for the court of any court of inquiry;

(3) All officers designated to take a deposition;

(4) All persons detailed to conduct an investigation; and

(5) All other persons designated by regulations issued pursuant to this chapter.

(c) Officers on the state reserve list and state retired list shall not be authorized to administer oaths as provided in this Code section unless they are on active duty in or with the organized militia under orders of the Governor as prescribed in this chapter.

(d) As used in this Code section, the term "officer" means a commissioned officer, commissioned warrant officer, or warrant officer.

(e) The signature without seal of any such person, together with the title of his office, shall be prima-facie evidence of his authority. (Ga. L. 1955, p. 10, § 61.2; Ga. L. 1985, p. 356, § 10.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 936.

38-2-572. Marshals; duties, powers, immunities.

(a) Summary courts-martial and the presidents of other courts-martial and of courts of inquiry may each appoint and, at any time, remove one or more marshals, who shall execute any process, mandate, or order issued by the president or court or officer and shall perform all acts and duties by this chapter imposed on or authorized to be performed by any sheriff as defined in Code Section 15-16-10.

(b) All such marshals shall be deemed peace officers and for the purposes of this chapter shall have all the powers and immunities of peace officers. (Ga. L. 1955, p. 10, § 61.6.)

38-2-573. Immunity of military courts, members, or others acting upon its authority or reviewing its proceedings.

No action or proceeding shall be prosecuted or maintained against the convening authority or a member of a military court, or officer, or other person acting under its authority or reviewing its proceedings on account of the approval, imposition, or execution of any sentence, the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1202; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, § 61.9.)

38-2-574. Code sections to be explained to enlisted personnel.

Code Sections 38-2-322, 38-2-323, 38-2-340 through 38-2-360, 38-2-393, 38-2-395, 38-2-411, 38-2-431, 38-2-432, 38-2-460, 38-2-510 through 38-2-553, this Code section, and Code Sections 38-2-575 and 38-2-576 shall be explained carefully to every enlisted person at the time of his enlistment, transfer, or induction into, or when ordered to duty in or with, any of the forces of the organized militia or within 30 days thereafter. The Code sections also shall be explained annually to each unit of the organized militia. A complete text of this article and of the regulations prescribed by the Governor thereunder shall be made available to any member of the organized militia, upon his request, for his personal examination. (Ga. L. 1955, p. 10, § 61.3; Ga. L. 1995, p. 10, § 38.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 937.

38-2-575. Complaints of wrongs by commanding officers.

Any member of the organized militia who believes himself to have been wronged by his commanding officer and who, upon due application to such commander, is refused redress may complain to any superior officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom the complaint is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the adjutant general a true statement of the complaint, with the proceedings had thereon. (Ga. L. 1955, p. 10, § 61.4.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 938.

38-2-576. Redress of injuries to private property; complaint; investigating board; assessment.

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the organized militia, the officer may, subject to such regulations as may be prescribed pursuant to this chapter, convene a board to investigate the complaint. The board shall consist of from one to three officers and shall have, for the purpose of the investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board shall be subject to the approval of the commanding officer and, in the amount approved by him, shall be charged against the pay of the offenders. The order of the commanding officer directing charges authorized in this subsection shall be conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) Where the offenders cannot be ascertained but the organization or detachment to which they belong is known, the adjutant general may direct that the amount of damages assessed and approved be paid to the injured parties from the military fund of the unit or units of the organized militia to which the offenders belong. (Ga. L. 1955, p. 10, § 61.5; Ga. L. 1982, p. 3, § 38.)

Cross references. — Destruction of property other than military property generally, § 38-2-541.

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 939.

RESEARCH REFERENCES

ALR. — Official immunity of state national guard members, 52 ALR4th 1095.

38-2-577. Delegation by Governor.

The Governor is authorized to delegate any authority vested in him under this article and to provide for the subdelegation of any such authority, except with respect to the power vested in him under Code Section 38-2-390. (Ga. L. 1955, p. 10, § 61.11.)

U.S. Code. — For similar provision in Uniform Code of Military Justice, see 10 U.S.C. § 940.

CHAPTER 3

EMERGENCY MANAGEMENT

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38-3-153. Immunity from civil liability.

Cross references. — Tax credit for disaster assistance funds received, § 48-7-29.4.

OPINIONS OF THE ATTORNEY GENERAL

Status of Stone Mountain Memorial Association. — Stone Mountain Memorial Association cannot properly be construed to be a "state agency" for the purposes of Ga. L. 1951, p. 224.

Delegation of responsibilities. — Governor and the director of civil defense (now emergency management) may delegate responsibilities with respect to civil defense. 1962 Op. Att'y Gen. p. 29.

RESEARCH REFERENCES

ALR. — Judicial decisions involving rationing, 155 ALR 1475.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, "Is Georgia Prepared for a Health Pandemic? Legal Issues Regarding Emergency Preparedness and Declaration of Emergency Health Pandemic in Georgia," see 15 (No. 6) Ga. St. B.J. 30 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Lowering of minimum age for participation in rescue operations. — There are no legal bars to amending rules and regulations of the Civil Defense Division (now Emergency Management Division), to lower minimum age for participating in Georgia civil defense (now emergency management) rescue operations from 18 to 16. 1981 Op. Att'y Gen. No. 81-73.

38-3-1. Short title.

Articles 1 through 3 of this chapter may be cited as the "Georgia Emergency Management Act of 1981." (Ga. L. 1951, p. 224, § 1; Ga. L. 1982, p. 3, § 38.)

Cross references. — Georgia Antiterroristic Training Act, T. 16, C. 11, A. 4, P. 4.

OPINIONS OF THE ATTORNEY GENERAL

Chapter authorizes board for implementation of emergency management plan. — Ga. L. 1951, p. 224 authorizes city and county governments to appoint the various boards necessary to implement the Georgia plan for emergency management of resources. 1967 Op. Att'y Gen. No. 67-124.

38-3-2. Policy and purpose.

(a) Because of the existing and increasing possibility of the occurrence of emergencies or disasters resulting from manmade or natural causes or enemy attack; in order to ensure that preparations of this state will be adequate to deal with such emergencies or disasters; generally to provide for the common defense and to protect the public peace, health, and safety; and to preserve the lives and property of the people of this state, it is found and declared to be necessary:

(1) To create a state emergency management agency and to authorize the creation of local organizations for emergency management in the political subdivisions of the state;

(2) To confer upon the Governor and upon the executive heads of governing bodies of the political subdivisions of the state the emergency powers provided in Articles 1 through 3 of this chapter;

(3) To provide for the rendering of mutual aid among the political subdivisions of the state, with other states, and with the federal government with respect to the carrying out of emergency management functions; and

(4) To authorize the establishment of such organizations and the taking of such steps as are necessary and appropriate to carry out Articles 1 through 3 of this chapter.

(b) It is further declared to be the purpose of Articles 1 through 3 of this chapter and the policy of this state that all emergency management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, including its various departments and agencies; of other states and localities; and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any emergency or disaster that may occur. (Ga. L. 1981, p. 224, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 171, § 1; Ga. L. 1973, p. 74, § 1; Ga. L. 1981, p. 389, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Military and Civil Defense, § 313.

C.J.S. — 93 C.J.S., War and National Defense, § 74.

38-3-3. Definitions.

As used in Articles 1 through 3 of this chapter, the term:

(1) "Bioterrorism" means the intentional creation or use of any microorganism, virus, infectious substance, or any component thereof, whether naturally occurring or bioengineered, to cause death, illness, disease, or other biological malfunction in a human, animal, plant, or other living organism in order improperly or illegally to influence the conduct of government, to interfere with or disrupt commerce, or to intimidate or coerce a civilian population.

(2) "Emergency management" means the preparation for the carrying out of all emergency functions other than functions for which military forces are primarily responsible to prevent, minimize, and repair injury and damage resulting from emergencies, energy emergencies, disasters, or the imminent threat thereof, of manmade or natural origin caused by enemy attack, sabotage, acts of domestic or international terrorism, civil disturbance, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infestation, explosion, riot or other hostile action, radiological action, or other causes. These functions include, without limitation, fire-fighting services; police services; emergency medical services; rescue; engineering; warning services; communications; defense from radiological, chemical, biological, and other special weapons to include weapons of mass destruction; evacuation of persons from stricken areas; emergency welfare services; consequence management functions to include victim services; emergency transportation; plant protection; temporary restoration of public utility services; and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(3) "Energy emergency" means a condition of danger to the health, safety, welfare, or economic well-being of the citizens of this state arising out of a present or threatened shortage of usable energy resources; also any condition of substantial danger to the health, safety, or welfare of the citizens of this state resulting from the operation of any electrical power-generating facility, the transport of any energy resource by any means whatsoever, or the production, use or disposal of any source material, special nuclear material, or by-product, as defined by the Atomic Energy Act of 1954, 68 Stat. 919,

42 U.S.C. Section 2011, et seq.; also any nuclear incident, as defined by the Atomic Energy Act of 1954, occurring within or outside this state, substantially affecting the health, safety, or welfare of the citizens of this state.

(4) "Energy resources" means all forms of energy or power including, without limitation, oil, gasoline, and other petroleum products; natural or synthetic gas; electricity in all forms and from all sources; and other fuels of any description, except wood.

(4.1) "Pandemic influenza emergency" means the declaration by the World Health Organization of at least a Phase 5 Pandemic Alert for influenza occurring in the United States or the State of Georgia or the declaration by the Centers for Disease Control and Prevention of at least a Category 2 Pandemic Severity Index for influenza occurring in the United States or the State of Georgia.

(5) "Political subdivision" means:

(A) Cities having a population of over 1,000;

(B) Cities having a population of less than 1,000 in which the Governor has established a local organization; and

(C) Counties.

(6) "Public health emergency" means the occurrence or imminent threat of an illness or health condition that is reasonably believed to be caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin and poses a high probability of any of the following harms:

(A) A large number of deaths in the affected population;

(B) A large number of serious or long-term disabilities in the affected population; or

(C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(7) "State of emergency" means the condition declared by the Governor when, in his judgment, the threat or actual occurrence of a disaster, emergency, or energy emergency in any part of the state is of sufficient severity and magnitude to warrant extraordinary assistance by the state to supplement the efforts and available resources of the several localities and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby. (Ga. L. 1951, p. 224, § 3; Ga. L. 1973, p. 74, §§ 2, 6; Ga. L. 1977, p. 192, § 1; Ga. L. 1981, p. 389, § 2; Ga. L. 1982, p. 3, § 38; Ga. L. 1995, p. 10, § 38; Ga. L. 1999, p. 372, § 1; Ga. L. 2002,

p. 1386, § 11; Ga. L. 2009, p. 184, § 3/HB 217; Ga. L. 2012, p. 775, § 38/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "42 U.S.C. Section 2011," for "42 U.S.C. 2011," in paragraph (3).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Georgia. St. U.L. Rev. 1 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Governor's authority over local evacuation efforts. — Designated local officials have the authority to require evacuation of citizens during a local emergency, but the Governor may exercise the Governor's authority over such an evacuation if the Governor believes the emergency is beyond local control or constitutes a "state of emergency." 1983 Op. Att'y Gen. No. 83-60.

38-3-4. Enforcement.

The law enforcement authorities of the state and of the political subdivisions thereof shall enforce the orders, rules, and regulations issued pursuant to Articles 1 through 3 of this chapter. (Ga. L. 1951, p. 224, § 16.)

OPINIONS OF THE ATTORNEY GENERAL

Sheriff's function. — Sheriff's enforcement function is separate and distinct from managerial function of county commission. 1982 Op. Att'y Gen. No. 82-19.

As law enforcing authority of county, county sheriff is responsible for enforcing all valid orders, rules and regulations issued pursuant to O.C.G.A. Art. 1, Ch. 3, T. 38 by a local unit director. 1982 Op. Att'y Gen. No. 82-19.

38-3-5. Injunction; who may obtain; remedy at law irrelevant.

The director of emergency management or any person, corporation, firm, or association, in addition to the remedies set forth in Articles 1 through 3 of this chapter, may obtain from a court of competent jurisdiction an injunction to restrain violation of the provisions of Articles 1 through 3 of this chapter. The grant of an injunction is authorized notwithstanding the availability of adequate remedies at law. (Ga. L. 1974, p. 558, § 3.)

38-3-6. Liberality of construction.

Articles 1 through 3 of this chapter shall be construed liberally in order to effectuate their purposes. (Ga. L. 1951, p. 224, § 22.)

38-3-7. Penalty for violation.

Any person who violates any provision of Articles 1 through 3 of this chapter or any rule, order, or regulation made pursuant to Articles 1 through 3 of this chapter shall be guilty of a misdemeanor. (Ga. L. 1951, p. 224, § 21.)

ARTICLE 2

ORGANIZATION AND ADMINISTRATION

Administrative rules and regulations. — Emergency management disaster preparedness equipment grants-in-aid, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Defense Emergency Management Division, Chapter 155-2.

OPINIONS OF THE ATTORNEY GENERAL

Lowering minimum age for participation in rescue operations. — There are no legal bars to amending rules and regulations of the Civil Defense Division (now Emergency Management Division) to lower the minimum age for participating in Georgia civil defense (now emergency management) rescue operations from 18 to 16. 1981 Op. Att'y Gen. No. 81-73.

38-3-20. Georgia Emergency Management Agency created; director; staff; offices; director's duties; disaster coordinator.

(a) There is established the Georgia Emergency Management Agency with a director of emergency management who shall be the head thereof. The Georgia Emergency Management Agency shall be assigned to the Office of Planning and Budget for administrative purposes only as provided in Code Section 50-4-3.

(b) The Governor shall appoint the director of emergency management. He or she shall hold office at the pleasure of the Governor, who shall fix his or her compensation. The director of emergency management shall hold no other state office.

(c) The director may employ such professional, technical, clerical, stenographic, and other personnel, may fix their compensation, and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management, as may be necessary to carry out the purposes of Article 1, this article, and Article 3 of this chapter, the duties of the agency and the director described in Part 4 of Article 2 of Chapter 5 of Title 46, the "Georgia Emergency Telephone Number 9-1-1 Service Act of 1977," as amended.

(d) The director and other personnel of the Georgia Emergency Management Agency shall be provided with appropriate office space,

furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

(e) The director, subject to the direction and control of the Governor, shall be the executive head of the Georgia Emergency Management Agency and shall be responsible to the Governor for carrying out the program for emergency management in this state. He or she shall coordinate the activities of all organizations for emergency management within the state, shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by Article 1, this article, and Article 3 of this chapter as may be prescribed by the Governor and such additional authority, duties, and responsibilities as described in Part 4 of Article 2 of Chapter 5 of Title 46, the "Georgia Emergency Telephone Number 9-1-1 Service Act of 1977," as amended.

(f) The director of emergency management shall also be the disaster coordinator and shall act for the Governor when requested to do so. (Ga. L. 1951, p. 224, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 171, § 2; Ga. L. 1981, p. 389, § 2; Ga. L. 1985, p. 468, § 1; Ga. L. 1992, p. 1258, § 3; Ga. L. 1998, p. 1017, § 1; Ga. L. 1999, p. 372, § 2; Ga. L. 2005, p. 660, § 7/HB 470.)

Cross references. — Department of Defense generally, § 38-2-130 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Deputy director not subject to merit system. — Deputy director of emergency management is not subject to merit system coverage because of the provisions of subsection (b). 1963-65 Op. Att'y Gen. p. 7 (issued prior to 1985 amendment, which substituted references to executive director for references to deputy director).

Position of deputy director for emergency management, being specifically excluded by law from the classified service, is not counted against the five discretionary positions which the adjutant general may designate for inclusion in the unclassified service. 1975 Op. Att'y Gen. No. 75-81 (issued prior to 1985 amendment, which substituted references to executive director for references to deputy director).

38-3-21. Director authorized to make rules and regulations.

Subject to the approval of the Governor, the director of emergency management shall be authorized to promulgate such rules and regulations as may be required to effectuate the purposes of Articles 1 through 3 of this chapter. (Ga. L. 1973, p. 74, § 15; Ga. L. 1981, p. 389, § 2.)

38-3-22. Governor's emergency management powers and duties.

(a) The Governor shall have general direction and control of the Georgia Emergency Management Agency and shall be responsible for the carrying out of the provisions of Article 1, this article, and Article 3 of this chapter and, in the event of disaster or emergency beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

(b) In performing his duties under Articles 1 through 3 of this chapter, the Governor is further authorized and empowered:

(1) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of Articles 1 through 3 of this chapter with due consideration to the plans of the federal government;

(2) To prepare a comprehensive plan and program for emergency management in this state, such plan and program to be integrated into and coordinated with the emergency management and preparedness plans of the federal government and of other states to the fullest possible extent; and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of this state, such plans to be integrated into and coordinated with the emergency management plan and program of this state to the fullest possible extent;

(3) In accordance with the plan and program for emergency management in this state, to ascertain the requirements of the state or the political subdivisions thereof for food, clothing, and other necessities of life, in the event of a manmade or natural emergency or disaster, or enemy attack; to plan for and procure supplies, medicines, materials, and equipment, and to use and employ from time to time any of the property, services, and resources within the state for the purposes set forth in Articles 1 through 3 of this chapter; to make surveys of the industries, resources, and facilities within the state as are necessary to carry out the purposes of Articles 1 through 3 of this chapter; to institute training programs and public information programs, to take all other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual emergency or disaster, and to ensure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need;

(4) To coordinate with the President, the heads of the armed forces, the agency or officers responsible for emergency management and defense of the United States, and the officers and agencies of other states, matters pertaining to emergency management in the state

and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies for any action looking to emergency management, including the direction or control of emergency management exercises he deems necessary and appropriate for operational capability;

(5) To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with Articles 1 through 3 of this chapter and with the orders, rules, and regulations made pursuant thereto;

(6) To employ such measures and give such directions to the Department of Public Health and local boards of health as may be reasonably necessary for the purpose of securing compliance with Articles 1 through 3 of this chapter or with the findings or recommendations of the Department of Public Health and local boards of health by reason of conditions arising from emergencies or disasters, manmade or natural, or the threat of enemy attack or otherwise;

(7) To utilize the services and facilities of existing offices and agencies of the state and of the political subdivisions thereof; and all such offices and agencies shall cooperate with and extend their services and facilities to the Governor as he may request;

(8) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of Articles 1 through 3 of this chapter including, with due consideration to the recommendations of the local authorities, full-time state and regional area or field coordinators;

(9) To delegate any authority vested in him under Articles 1 through 3 of this chapter;

(10) On behalf of this state to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a state-wide basis or local political subdivision basis or with a neighboring state. Such mutual aid arrangements shall include but not be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health, medical, and related services; fire-fighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units; and fire-fighting, police, and health units on such terms and conditions as are deemed necessary; and

(11) To sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to in paragraph (10) of this subsection.

(c) In addition to the emergency and disaster prevention measures included in the state and local emergency management plans, the Governor shall be empowered to make such studies, surveys, or analyses of potential emergency or disaster areas of the state as he deems necessary, both public and private, to prevent or reduce the harmful consequences of emergencies or disasters resulting from manmade or natural causes or from enemy attack; and to develop or cause to be developed measures to reduce the harmful consequences indicated in the studies, surveys, or analyses. (Ga. L. 1951, p. 224, § 6; Ga. L. 1973, p. 74, § 3; Ga. L. 1981, p. 389, § 2; Ga. L. 1982, p. 3, § 38; Ga. L. 1992, p. 1258, § 4; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendment, effective July 1, 2011, twice substituted "Department of Public Health" for "Department of Community Health" in paragraph (b)(6).

Cross references. — Governor's power to postpone or extend qualifying periods for election during state of emergency, § 21-2-50.1. Cooperation between Georgia and other states generally, T. 28, C. 6. Further provisions regarding emergency powers of Governor, §§ 38-2-6, 38-3-51, 45-12-29 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

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Governor's authority. — Designated local officials have the authority to require evacuation of citizens during a local emergency, but the Governor may exercise the Governor's authority over such an evacuation if the Governor believes the emergency is beyond local control or constitutes a "state of emergency." 1983 Op. Att'y Gen. No. 83-60.

Governor has authority to make the commitments specified in a hazard mitigation clause to be added by amendment to the Continuing Federal-State Agreement for Emergencies. 1980 Op. Att'y Gen. No. 80-93.

Delegation of responsibilities. — Governor and director of civil defense (now emergency management) may delegate to the director (now commissioner) of the Board of Offender Rehabilitation their responsibilities with respect to emergency management. 1962 Op. Att'y Gen. p. 29.

Establishment of local organizations authorized. — Governor has legal authority to authorize and direct the governing officials of the various counties to establish a local emergency management organization. 1962 Op. Att'y Gen. p. 27.

Registration of civilian aircraft authorized. — Statute is a sufficient delegation of authority to warrant the issuance of a regulation requiring the registration of civilian aircraft. 1950-51 Op. Att'y Gen. p. 353 (see O.C.G.A. § 38-3-22).

38-3-22.1. Safety plan addressing threat of terrorism required of state agencies or authorities; exemptions; training and technical assistance; confidentiality of plans and related documentation.

(a) Every state agency or authority, except those exempted in subsection (b) of this Code section, shall prepare an agency safety plan to address the threat of terrorism, to respond effectively to such incidents, and to provide a safe environment for state personnel and for those citizens conducting business with state agencies. In addition to acts of terrorism, such plan shall also address preparedness for natural disasters, hazardous materials or radiological accidents, and acts of violence. The safety plans of agencies and authorities shall be prepared with input from the appropriate supervisors and rank-and-file employees and local law enforcement, fire service, public safety, and emergency management agencies. Such plans shall be reviewed internally and, if necessary, updated annually. Such plans shall be submitted to the local emergency management agency.

(b) The Department of Public Safety, the Department of Corrections, and any other state agency which operates secured facilities shall be exempt from the requirements of subsection (a) of this Code section.

(c) Subject to the availability of funds for such purpose, the Georgia Emergency Management Agency shall provide training and technical assistance to agencies and authorities and may provide such training and technical assistance to local units of government and to critical facilities operated by the private sector. Such training and technical assistance shall include, but not be limited to, crisis response team development, site surveys and safety audits, crisis management planning, exercise design, safe school planning, emergency operations planning, search and seizure, bomb threat management, and model safety plans.

(d) The following records shall not be subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50:

(1) Site surveys, safety audits, and vulnerability assessments performed pursuant to subsection (a) of this Code section; and

(2) Any other record produced pursuant to this Code section the disclosure of which would, in the determination of the director of the Georgia Emergency Management Agency, endanger the life or physical safety of any person or persons or the physical safety of any public property. (Code 1981, § 38-3-22.1, enacted by Ga. L. 2004, p. 743, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "operates" was substituted for "operate" in subsection (b).

38-3-22.2. Establishment of Airport Antiterrorism Training Committee; annual training.

(a) As used in this Code section, the term:

(1) "Airport Antiterrorism Training Committee" means a committee composed of five members: one appointed by and to serve at the pleasure of the Homeland Security Director; one appointed by and to serve at the pleasure of the director of emergency management; one appointed by and to serve at the pleasure of the commissioner of transportation; one appointed by and to serve at the pleasure of the State Board of the Technical College System of Georgia; and one appointed by and to serve at the pleasure of the commissioner of public safety.

(2) "Airport manager" means, with respect to each airport located in this state, the person who serves as manager, serves as general manager, or otherwise serves as the chief administrative officer of such airport. If for any airport, there is more than one person who may fit such definition, the local government, authority, or company operating such airport shall designate one such person as its airport manager for purposes of this Code section.

(b) The Airport Antiterrorism Training Committee shall establish and maintain an annual training program for persons who serve as airport managers. It shall be unlawful for any person to serve as an airport manager in this state unless such person is in compliance with rules and regulations of the Airport Antiterrorism Training Committee implementing this Code section. Such rules and regulations:

(1) Shall require each airport manager in this state to complete 14 hours of initial training and eight hours of annual training thereafter, with the first training to be completed in calendar year 2004;

(2) Shall establish the curriculum of such annual training;

(3) May provide for exemption from or delay of the annual training otherwise required in cases of providential cause or hardship; and

(4) May provide for exemption from the annual training otherwise required for airport managers who demonstrate that they have or will otherwise obtain the competencies taught in the annual training curriculum.

(c) The Airport Antiterrorism Training Committee shall by agreement or contract arrange for the annual training required under this Code section to be administered by the Georgia Aviation Technical College under the jurisdiction of the State Board of the Technical College System of Georgia.

(d) The tuition costs of providing such training may be paid in whole or in part from funds appropriated or otherwise available to any department represented on the Airport Antiterrorism Training Committee or may be paid in whole or in part by the airport managers being trained or any combination thereof, as established by the Airport Antiterrorism Training Committee. (Code 1981, § 38-3-22.2, enacted by Ga. L. 2004, p. 743, § 2; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2012, p. 775, § 38/HB 942.)

The 2011 amendment, effective July 1, 2011, substituted "State Board of the Technical College System of Georgia" for "State Board of Technical and Adult Education" in paragraph (a)(1) and in subsection (c).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

38-3-23. Investigations and surveys; subpoena power; cooperation.

For the purpose of making surveys and investigations and obtaining information, except the investigation of subversive activities that are the responsibility of the Federal Bureau of Investigation, the Governor may compel by subpoena the attendance of witnesses and the production of books, papers, records, and documents of individuals, firms, associations, and corporations. All officers, boards, commissions, and departments of the state and the political subdivisions thereof having information with respect thereto shall cooperate with and assist him in making the investigations and surveys. (Ga. L. 1951, p. 224, § 12.)

38-3-24. Traffic control; plans, regulations, and coordination.

The Governor may formulate and execute plans and regulations for the control of traffic in order to provide for the rapid and safe movement of evacuation over public highways and streets of people, troops, or vehicles and of materials for national defense or for use in any defense industry. He may coordinate the activities of the departments or agencies of the state and of the political subdivisions thereof concerned directly or indirectly with public highways and streets in a manner which will best effectuate such plans. (Ga. L. 1951, p. 224, § 13.)

38-3-25. Lease or loan of state property for national or local purposes; transfer of state personnel; local authorities empowered to utilize property.

(a) Whenever the Governor deems it to be in the public interest and notwithstanding any inconsistent provision of law, he may:

(1) Authorize any department or agency of the state to lease or lend, on such terms and conditions as he may deem necessary to

promote the public welfare and protect the interests of the state, any real or personal property of the state government to the President, the heads of the armed forces, or to the emergency management agency or officials of the United States; and

(2) Enter into a contract on behalf of the state for the lease or loan to any political subdivision of the state, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state government or the temporary transfer or employment of personnel of the state government to or by any political subdivision of the state.

(b) The mayor, chief executive, or executive body of each political subdivision of the state may, notwithstanding any inconsistent provision of law:

(1) Enter into a contract or lease with the state, or accept any loan, or employ personnel as provided in paragraph (2) of subsection (a) of this Code section. Furthermore, the political subdivision may equip, maintain, utilize, and operate any such property and employ necessary personnel therefor in accordance with the purposes for which the agreement was executed; and

(2) Do all things and perform any and all acts which he may deem necessary to effectuate the purpose for which the contract was entered into. (Ga. L. 1951, p. 224, § 14; Ga. L. 1981, p. 389, § 2.)

38-3-26. Mobile support units; organization; rights, powers, duties, privileges, immunities, and compensation, of employees; reimbursement to localities and out-of-state units; service out of state.

(a) The Governor, or the director of emergency management at the request of the Governor, is authorized to create and establish such number of mobile support units as may be necessary to reinforce emergency management organizations in stricken areas and with due consideration of the plans of the federal government and of other states. He shall appoint a commander for each unit who shall have primary responsibility for the organization, administration, and operation of the unit. Mobile support units shall be called to duty upon orders of the Governor or the director and shall perform their functions in any part of the state or, upon the conditions specified in this Code section, in other states.

(b) Personnel of mobile support units while on duty, whether within or outside the state, shall:

(1) If they are employees of the state, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment;

(2) If they are employees of a political subdivision of the state and, whether serving within or outside the political subdivision, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment; and

(3) If they are not employees of the state or a political subdivision thereof, be entitled to adequate compensation incidental to their employment by the state for their services and to the same rights and immunities as are provided by law for the employees of this state. All personnel of mobile support units, while on duty, shall be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving and shall be reimbursed for all actual and necessary travel and subsistence expenses.

(c) The state shall reimburse a political subdivision for the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of employees of the political subdivision while serving as members of a mobile unit; for all payments for death, disability, or injury of the employees incurred in the course of such duty; and for all losses of or damage to supplies and equipment of the political subdivision resulting from the operation of the mobile support unit.

(d) Whenever a mobile support unit of another state shall render aid in this state pursuant to the orders of the governor of its home state and upon the request of the Governor of this state, this state shall reimburse the other state for the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of the personnel of the mobile support unit while rendering the aid; for all payments for death, disability, or injury of the personnel incurred in the course of rendering the aid; and for all losses of or damage to supplies and equipment of the other state or a political subdivision thereof resulting from the rendering of the aid; provided, however, that the laws of such other state contain provisions substantially similar to this Code section or that provisions to the foregoing effect are embodied in a reciprocal mutual aid agreement or compact or that the federal government has authorized or agreed to make reimbursement for the mutual aid as above provided.

(e) No personnel of mobile support units of this state shall be ordered by the Governor to operate in any other state unless the laws of the other state contain provisions substantially similar to this Code section, or unless the reciprocal mutual aid agreements or compacts include provisions providing for the reimbursement, or unless the reimbursement will be made by the federal government by law or agreement. (Ga. L. 1951, p. 224, § 11; Ga. L. 1973, p. 74, § 7; Ga. L. 1981, p. 389, § 2.)

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Units for use only on call of Governor or director. — Statute does not contemplate the use of equipment and personnel of mobile support units as adjunctions to city and county fire and police departments for training purposes, or otherwise except in "stricken areas" and upon call of the Governor or director. 1954-56 Op. Att'y Gen. p. 63. (see O.C.G.A. § 38-3-26).

Volunteers not subject to Ch. 9, T. 34. — Volunteer emergency management workers who do not receive compensation for their work are not subject to the Workers' Compensation Act (see O.C.G.A. Ch. 9, T. 34). 1962 Op. Att'y Gen. p. 611.

38-3-27. Local organizations for emergency management; creation; structure; powers; directors; appointment, qualifications, and compensation; state to provide financial assistance; entitlement for funding.

(a)(1) The governing body of each county of this state may establish a local organization for emergency management in accordance with the state emergency management plan and program. If a county fails to establish an organization for emergency management in accordance with the state emergency management plan and program, any municipality in such county may establish its own organization for emergency management. In cases where a county has an organization for emergency management, such organization shall include participation by each city within the county unless the governing authority of any particular city elects to implement its own organization for emergency management. Any two or more of the above-mentioned political subdivisions may, with the approval of the director, contract with each other so as to form one emergency management organization for the entire area included in the bounds of the contracting political subdivisions. The executive officer or governing body of the political subdivision is authorized to nominate a local director to the director of emergency management who shall have the authority to make the appointment. The local director shall have direct responsibility for the organization, administration, and operation of the local organization for emergency management, subject to the direction and control of the executive officer or governing body and shall serve at the pleasure of such executive officer or governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to Article 1, this article, and Article 3 of this chapter.

(2) A local director appointed pursuant to the provisions of paragraph (1) of this subsection who is paid a salary for full-time service as a director by the political subdivision or political subdivisions shall have the following minimum qualifications:

(A) The director shall be at least 21 years of age;

(B) The director shall not have been convicted of a felony. The executive officer or governing body of a political subdivision which nominates a local director shall furnish the director of emergency management two sets of fingerprints of the nominee. The director of emergency management shall forward fingerprints received concerning each nominee to the Georgia Crime Information Center of the Georgia Bureau of Investigation for the purpose of criminal identification through the fingerprint system of identification established by the Georgia Bureau of Investigation and the fingerprint system of identification established by the Federal Bureau of Investigation. The Georgia Crime Information Center shall report the findings of its records search and the records search of the Federal Bureau of Investigation to the director of emergency management;

(C) The director shall have completed a high school education or its equivalent and shall have successfully completed all initial courses required by the director of emergency management within 180 days following the date of nomination to office or within an extended period as determined by the director of emergency management and shall have successfully completed subsequent courses required by the director of emergency management within an appropriate period as determined by the director of emergency management;

(D) The director shall be capable of writing plans for responding to and recovering from disasters in his jurisdiction and shall be routinely available to respond to emergency scenes, command posts, or operation centers; to coordinate emergency response of public and private agencies and organizations; to attend training; and to attend meetings convened by the appointing authority or the director of emergency management; and

(E) The director shall not be self-employed or have any other occupation in the private sector which conflicts with his duties as a local director.

(3)(A) If a local director appointed pursuant to the provisions of paragraph (1) of this subsection is a part-time director, such part-time director shall meet the minimum qualifications in subparagraphs (A) through (D) of paragraph (2) of this subsection. If such local director is employed under a 40 to 90 percent (time required on job) work contract, such local director shall be required to devote at least 80 hours per month on emergency management matters but not more than 30 hours in any one week during normal business hours of other county offices. If such local director is

employed under a 25 to 39 percent (time required on job) work contract, such local director shall be required to devote at least 40 hours per month on emergency management matters but not more than 15 hours in any one week during normal business hours of other county offices.

(B) If the part-time paid director is also a part-time paid employee of the federal or state government, he must have written authorization from the appropriate appointing authority to hold the position of director and to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(C) If the part-time paid director is also a part-time paid employee of county or municipal government in another capacity, that government must enact an order or ordinance specifying that such director will be permitted to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection. The order or ordinance shall also specify that the individual, when acting as director, shall relinquish authorities and responsibilities associated with his other governmental employment and shall name a person to assume those authorities and responsibilities until such time as the director shall cease to function as director. In no case shall the county or municipal government seek or receive any reimbursement for the part-time paid director's salary if such director is employed and compensated by the county or municipality in another capacity.

(D) If the part-time paid director is also a part-time paid employee in the private sector, he shall have a letter from his employer stating that he shall, without penalty, be permitted to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(E) If the part-time paid director is self-employed, he must certify, by letter, that his schedule shall permit him to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(F) Except as provided in this subparagraph, any director or deputy director of a local emergency management organization appointed after July 1, 1999, shall be a certified emergency manager under the Georgia Emergency Management Agency's Certified Emergency Manager Program. The curriculum of the Certified Emergency Manager Program and requirements for certification shall be determined by the director of emergency management and shall include, but not be limited to, professional development series training, independent study courses, emer-

gency preparedness courses, and field-delivered courses. Certification may be obtained by an appointed director or deputy director within six months of his or her appointment. Certification shall expire biennially. As a condition of certification renewal, such emergency management personnel shall be required to satisfactorily complete continuing education requirements provided for in subparagraph (G) of this paragraph.

(G) Emergency management personnel certified under the Certified Emergency Manager Program shall complete annually a minimum of 24 hours of continuing education to maintain certification. The continuing education shall include programs and courses sponsored or approved by the director of emergency management. Personnel who lose their certification because of their failure to meet continuing education requirements will be eligible for recertification under provisions included in the Certified Emergency Manager Program.

(4) If a political subdivision has a volunteer director, the political subdivision shall furnish assistance to enable the volunteer director to carry out his duties outlined in this article and Article 3 of this chapter.

(5) The political subdivision shall designate an office in a building owned or leased by the political subdivision as the office of emergency management. Such office of emergency management shall have appropriate equipment and supplies, including but not limited to telephone and communication equipment, access to the 9-1-1 system if such system is operational in the political subdivision, desks, typewriters, file cabinets, and necessary office supplies. No such equipment or supplies shall be used for personal business. The local director shall post on the front door of the office the schedule of hours of the work week in which he will be attending to emergency management matters. The citizens of a political subdivision shall have accessibility to the office of emergency management and the local director or his designee shall be available or on call at all times beyond working hours.

(6) A local director whose salary is reimbursed in part or in full by the Georgia Emergency Management Agency shall also meet all requirements which may be imposed by the federal emergency management agency or its successor.

(7) A local director who no longer meets the qualifications or complies with the requirements of this subsection may be removed by the director of emergency management. In any case where a local director is removed pursuant to this paragraph, the executive officer or governing body of the political subdivision shall nominate another local director.

(b) Each political subdivision shall have the power and authority:

(1) To appropriate and expend funds, to execute contracts, and to obtain and distribute equipment, materials, and supplies for emergency management purposes;

(2) To provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency or disaster resulting from manmade or natural causes or enemy attack and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies;

(3) To appoint, employ, remove, or provide, with or without compensation, chiefs of services, warning personnel, rescue teams, auxiliary fire and police personnel, and other emergency management workers;

(4) To establish a primary and one or more secondary control centers to serve as command posts during an emergency or disaster;

(5) Subject to the order of the Governor or the chief executive of the political subdivision, to assign and make available for duty the employees, property, or equipment of the subdivision relating to fire-fighting, engineering, rescue, health, medical, and related services and to police, transportation, construction, and similar items or services for emergency management purposes, within or outside of the physical limits of the subdivision;

(6) In addition to the heretofore stated powers and authorities, to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims; and to enter into whatever arrangements, including purchase, of temporary housing units and payment of transportation charges which are necessary to prepare or equip such sites to utilize the housing units.

(c) There is created a state fund to provide assistance to local organizations for emergency management which are authorized by subsections (a) and (b) of this Code section. The fund shall be used for the purpose of making grants to local emergency management organizations to enable them to purchase or otherwise obtain equipment which is needed for disaster preparedness. The fund shall be administered by the director of emergency management who, by rules and regulations, shall establish uniform criteria governing application for and the use of funds granted to local organizations for emergency management pursuant to this subsection. The rules and regulations shall include, but shall not be limited to, provisions:

(1) Requiring that, as a condition precedent to receiving a state grant pursuant to this subsection, an amount equal to the state grant

shall be raised from local funds for the purchase of disaster preparedness equipment;

(2) Defining disaster preparedness equipment which shall qualify for purchase by the use of matching funds made available pursuant to this subsection;

(3) Establishing procedures and requirements governing the purchase of disaster preparedness equipment when matching funds made available pursuant to this subsection are used for the purchase;

(4) Establishing priorities governing grants made pursuant to this subsection which shall be based on the most effective and efficient use of disaster preparedness equipment purchased with matching funds made available pursuant to this subsection;

(5) Establishing forms, procedures, and requirements governing applications for grants pursuant to this subsection; and

(6) Prohibiting any single local emergency management organization from receiving more than 12 1/2 percent of the total funds annually appropriated to carry out this subsection.

(d) The funds necessary to carry out subsection (c) of this Code section shall come from funds specifically appropriated for such purpose by the General Assembly.

(e)(1) To the extent funds are appropriated for such purpose by the General Assembly, the director of emergency management is authorized and directed to provide funds to counties or municipalities which operate a local emergency management organization as required by this Code section. No county or municipality shall be entitled to receive funds unless the local emergency management organization has met all of the state and federal requirements to be an emergency management organization qualified to receive federal funds, including:

(A) Legal establishment by local ordinance or resolution;

(B) A legally appointed local director who has been endorsed and approved by the state director of emergency management and appointed by the Governor;

(C) An approved emergency and disaster plan with all applicable annexes; and

(D) An approved fiscal year program paper and other necessary compliance documents.

(2) The amount provided to each county or municipality shall be equal to the amount of any shortfall in federal funding which results in federal funds which less than match (on a 50 percent—50 percent

basis) the amount budgeted by the county or municipality for the purpose of operating and maintaining the local emergency management organization.

(3) In the event sufficient state funds other than those from federal sources are not appropriated for a fiscal year to fund the full amount provided for in paragraph (2) of this subsection, then the amount which would otherwise be payable to each county and municipality shall be reduced pro rata on the basis of the funds actually appropriated.

(4) The director of emergency management is authorized and directed to adopt and promulgate appropriate rules and regulations to carry out this subsection.

(5) Funds to carry out this subsection shall come from funds appropriated to the Office of Planning and Budget specifically for the purposes of carrying out this subsection.

(f)(1) After December 31, 1993, any county which fails at any time to have established a local organization for emergency management in accordance with the state emergency management plan and program shall not be entitled to any state funding for disaster relief assistance.

(2) After December 31, 1993, if a county has an organization for emergency management but a municipality within the county is not a part of the county's organization or plan and fails to have in place a local organization for emergency management in accordance with the state emergency management plan and program, such municipality shall not be entitled to any state funding for disaster relief assistance. (Ga. L. 1951, p. 224, § 9; Ga. L. 1963, p. 473, § 1; Ga. L. 1973, p. 74, § 6; Ga. L. 1975, p. 1262, § 1; Ga. L. 1980, p. 1247, § 1; Ga. L. 1981, p. 389, § 2; Ga. L. 1981, p. 1802, § 1; Ga. L. 1982, p. 3, § 38; Ga. L. 1991, p. 654, §§ 1, 2; Ga. L. 1992, p. 6, § 38; Ga. L. 1992, p. 1258, §§ 5, 6; Ga. L. 1999, p. 372, § 3; Ga. L. 2005, p. 660, § 8/HB 470; Ga. L. 2009, p. 8, § 38/SB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "this" was substituted for "his" in the first sentence of subparagraph (a)(3)(F).

JUDICIAL DECISIONS

Cited in Meriwether County v. Creamer, 146 Ga. App. 651, 247 S.E.2d 178 (1978).

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Local governmental authority to enact emergency management ordinances. — Local units of government have authority to enact ordinances for

emergency management purposes so long as such ordinances do not conflict with the Georgia Emergency Management Act, see O.C.G.A. T. 38, Ch. 3, Arts. 1-3, but local units of government do not have authority to declare a state of emergency or to exercise the power of condemnation for emergency management purposes under that Act. 1989 Op. Att'y Gen. 89-53.

Authority to establish local organizations. — There is statutory authority for a county commissioner to establish a local emergency management organization. 1962 Op. Att'y Gen. p. 27.

Ga. L. 1951, p. 224 authorizes city and county governments to appoint the various boards necessary to implement the Georgia plan for emergency management of resources. 1967 Op. Att'y Gen. No. 67-124.

Governor has legal authority to authorize and direct the governing officials of the various counties to establish local emergency management organizations. 1962 Op. Att'y Gen. p. 27.

Public corporation as local organization. — Corporation to perform the functions of an emergency management agency would have to be created by an Act of the General Assembly, and would be a public corporation. 1954-56 Op. Att'y Gen. p. 63.

Appointment of local directors. — Local emergency management directors are appointed by mayors of municipalities, and by commissioners for counties. 1958-59 Op. Att'y Gen. p. 314.

Disjunctive terminology of this section, i.e., "executive officer" vis-a-vis "governing body," was placed in the Act for the purpose of providing designations that would be appropriate to both municipal and county governments. As to municipalities, the word "executive officer" should be considered as controlling, whereas the words "governing body" primarily relate to counties. 1958-59 Op. Att'y Gen. p. 314 (see O.C.G.A. § 38-3-27).

Mayor of a municipality, not the city council, constitutes the "executive officer or governing body" responsible for nomination of a local director. 1958-59 Op. Att'y Gen. p. 314.

Definition of county organization's territorial jurisdiction. — Upon establishing a county organization, the Governor or director will define its territorial jurisdiction. 1958-59 Op. Att'y Gen. p. 315.

Volunteers not subject to Ch. 9, T. 34. — Volunteer emergency management workers who do not receive compensation for their work are not subject to the Workers' Compensation Act (ee O.C.G.A. Ch. 9, T. 34). 1962 Op. Att'y Gen. p. 611.

Governor's authority over local evacuation efforts. — Designated local officials have the authority to require evacuation of citizens during a local emergency, but the Governor may exercise his authority over such an evacuation if he believes the emergency is beyond local control or constitutes a "state of emergency." 1983 Op. Att'y Gen. No. 83-60.

"Executive officer or governing body" generally refers to the mayor of a municipality and county commission or board of commissioners of a county. 1982 Op. Att'y Gen. No. 82-19.

Operation of unit in county governed by county commission. — In county which is governed by county commission, director of local emergency management unit is directly responsible for operating the unit during an emergency, but is to operate pursuant to general direction of county commission. 1982 Op. Att'y Gen. No. 82-19.

Eligibility for position of local director. — Candidate for the position of local emergency management director who has been convicted of a felony and fully pardoned is not eligible to hold that position. 2000 Op. Att'y Gen. No. U2000-6.

RESEARCH REFERENCES

ALR. — Governmental powers in peace-time emergency, 85 ALR 1539; 88 ALR 1519; 96 ALR 312; 96 ALR 826.

38-3-28. Authority of political subdivisions; filing of orders, rules, and regulations; effect; consideration of federal emergency management regulations.

(a) The political subdivisions of the state and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of Articles 1 through 3 of this chapter, but not inconsistent with any orders, rules, or regulations promulgated by the Governor or by any state agency exercising a power delegated to it by him.

(b) All orders, rules, and regulations promulgated by the Governor, or by any political subdivision or other agency authorized by Articles 1 through 3 of this chapter to make orders, rules, and regulations, shall have the full force and effect of law when, in the event of issuance by the Governor or any state agency, a copy thereof is filed in the office of the Secretary of State or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk of the political subdivision or agency promulgating the same. All laws, ordinances, rules, and regulations inconsistent with Articles 1 through 3 of this chapter, or of any order, rule, or regulation issued under the authority of Articles 1 through 3 of this chapter, shall be suspended during the period of time and to the extent that the conflict exists.

(c) In order to attain uniformity so far as practicable throughout the country in measures taken to aid emergency management, all action taken under Articles 1 through 3 of this chapter and all orders, rules, and regulations made pursuant thereto shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations, and requests. (Ga. L. 1951, p. 224, § 15; Ga. L. 1981, p. 389, § 2.)

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Local governmental authority to enact emergency management ordinances. — Local units of government have authority to enact ordinances for emergency management purposes so long as such ordinances do not conflict with the Georgia Emergency Management Act, O.C.G.A. T. 38, Ch. 3, Arts. 1-3, but local units of government do not have authority to declare a state of emergency or to exercise the power of condemnation for emergency management purposes under that Act. 1989 Op. Att'y Gen. 89-53.

38-3-29. Local mutual aid arrangements; out-of-state arrangements; conformity with state plan.

(a) The director of each local organization for emergency management, in collaboration with other public and private agencies within this state, may develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of emergency or disaster too great to be dealt with unassisted. The arrangements shall be consistent with the state emergency management plan and program, and in time of emergency it shall be the duty of each local organization for emergency management to render assistance in accordance with the mutual aid arrangements.

(b) The director of each local organization for emergency management, subject to the approval of the Governor, may enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency management aid and assistance in case of emergency or disaster too great to be dealt with unassisted. (Ga. L. 1951, p. 224, § 8; Ga. L. 1973, p. 74, § 5; Ga. L. 1981, p. 389, § 1.)

38-3-30. Aid rendered by local employees to other political subdivisions; reimbursement of personnel and equipment expenses by aided locality; procedure.

(a) Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in Code Section 38-3-27, the employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

(b) The political subdivision in which any equipment is used pursuant to this Code section shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for the loss, damage, or expense shall be allowed unless, within 60 days after the same is sustained or incurred, an itemized notice of the claim under oath is served by mail or otherwise upon the chief fiscal officer of the political subdivision where the equipment was used. The political subdivision which is aided pursuant to this Code section shall also pay and reimburse the political subdivision furnishing the aid for the compensation paid to employees furnished under this Code section during the time of the rendition of the aid and shall defray the actual traveling and maintenance expenses of the employees while they are rendering the aid. The reimbursement shall include any amounts paid or due for compensation due to personal injury or death while the employees are engaged in rendering the aid. The term "employee," as used in this Code section, shall mean, and this

Code section shall apply with equal effect to, paid, volunteer, and auxiliary employees and emergency management workers.

(c) The foregoing rights, privileges, and obligations shall also apply in the event such aid is rendered outside the state, provided that payment or reimbursement in such case shall or may be made by the state or political subdivision receiving the aid pursuant to a reciprocal mutual-aid agreement or compact with the state or by the federal government. (Ga. L. 1951, p. 224, § 10; Ga. L. 1981, p. 389, § 2.)

RESEARCH REFERENCES

ALR. — Governmental powers in peace-time emergency, 85 ALR 1539; 88 ALR 1519; 96 ALR 312; 96 ALR 826.

38-3-31. Authority of state and localities to accept gifts, grants, or loans, from federal or private sources.

(a) Whenever the federal government or any agency or officer thereof offers to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency management, the state, acting through the Governor, or the political subdivision acting with the consent of the Governor and through its executive officer or governing body, may accept the offer. Upon the acceptance the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the service, equipment, supplies, materials, or funds on behalf of the state or the political subdivision, subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(b) Whenever any person, firm, or corporation offers to the state or to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purpose of emergency management, the state, acting through the Governor, or the political subdivision acting through its executive officer or governing body, may accept the offer. Upon the acceptance the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or the political subdivision, subject to the terms of the offer. (Ga. L. 1951, p. 224, § 18; Ga. L. 1981, p. 389, § 2.)

38-3-32. Sovereign immunity granted those who allow premises to be used for emergency management purposes; when.

When any person, firm, or corporation owning or controlling any real estate or other premises authorizes and permits any emergency management agency, board, or other authority of this state or of any political subdivision of this state to use the premises without charge therefor for the purpose of sheltering persons during an actual or practice emergency or disaster as contemplated by Articles 1 through 3 of this chapter, the person, firm, or corporation, at such times and for such periods during which the premises are occupied and actually employed for purpose of emergency management, shall be clothed with the sovereign immunity of the state. No civil action shall be brought or maintained against any such person, firm, or corporation to recover damages for personal injuries or death of any person while on the premises during an actual or practice emergency, disaster, or enemy attack, or for the loss or destruction of personal property brought upon the premises by any person seeking shelter thereon during an actual or practice emergency or disaster. (Ga. L. 1953, Jan.-Feb. Sess., p. 354, § 1; Ga. L. 1974, p. 386, § 1.)

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Statute is broadly worded and would apply to mining facilities as well as to other possible shelter areas. 1963-65 Op. Att'y Gen. p. 79 (see O.C.G.A. § 38-3-32).

38-3-33. Immunity granted those who provide equipment in emergencies.

Any person, including anyone in the business of selling or leasing new or used equipment, who provides equipment to the state or to any political subdivision of the state at no cost during an emergency or disaster situation, whether or not officially declared as such, for use in meeting any exigency caused by the emergency or disaster situation shall not be liable for any civil damages as a result of any act or omission by the person in providing the equipment. (Ga. L. 1980, p. 1048, § 1.)

38-3-34. Emergency management personnel; qualifications; oath; who may administer.

(a) No person shall be employed or associated in any capacity in any emergency management organization established under Articles 1 through 3 of this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force

or violence; or who has been convicted of or is under indictment or accusation charging any subversive act against the United States.

(b) Before entering upon his duties, each person who is appointed to serve in an organization for emergency management shall take an oath in writing before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

I do further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates, the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am a member of the (name of emergency management organization) I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence."

(c) For the purposes of Articles 1 through 3 of this chapter only, the executive heads of local organizations for emergency management and their duly appointed deputies and assistants are authorized to administer oaths to emergency management personnel. (Ga. L. 1951, p. 224, §§ 19, 20; Ga. L. 1981, p. 389, § 2; Ga. L. 1982, p. 3, § 38.)

38-3-35. Immunity of state and political subdivisions; of emergency management workers.

(a) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management worker or member of any agency engaged in emergency management activity. The foregoing shall not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under Chapter 9 of Title 34, Code Section 38-3-30, any pension law, or any act of Congress.

(b) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary emergency manage-

ment worker or member of any agency engaged in any emergency management activity complying with or reasonably attempting to comply with Articles 1 through 3 of this chapter; or any order, rule, or regulation promulgated pursuant to Articles 1 through 3 of this chapter, or pursuant to any ordinance relating to precautionary measures enacted by any political provisions of Articles 1 through 3 of this chapter, or pursuant to any ordinance relating to precautionary measures enacted by any political subdivision of the state shall be liable for the death of or the injury to person or for damage to property as a result of any such activity. (Ga. L. 1951, p. 224, § 17; Ga. L. 1973, p. 74, § 8; Ga. L. 1981, p. 389, § 2; Ga. L. 1982, p. 3, § 38.)

Cross references. — Liability of law enforcement officers performing duties at scenes of emergencies, § 35-1-7. Liability of members of fire departments for acts performed while fighting fires or performed at scenes of emergencies, § 51-1-30.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 228.

ALR. — Remedy available against invalid judgment in favor of United States, state, or other governmental unit immune to suit, 163 ALR 244.

Validity and construction of legislation conferring personal immunity on public officers or employees for acts in course of duty, 163 ALR 1435.

38-3-36. Director to license nongovernmental rescue organizations; exception; registration of public and private search and rescue dog teams.

(a) Except as otherwise provided by subsection (b) of this Code section, all nongovernmental rescue organizations, associations, groups, teams, search and rescue dog teams, or individuals, whether or not they are holders of a charter issued by this state or officers thereof, shall be prohibited from performing any rescue or emergency management type activity until the organization, association, group, team, search and rescue dog team, or individual has been licensed by the director of emergency management to perform the activities. It is expressly declared that Articles 1 through 3 of this chapter shall not amend, repeal, alter, or affect in any manner Code Section 51-1-29.

(b) Any marine rescue squadron sponsored by and operating under the direction and control of the sheriff of the county of residence of the squadron and chartered as a Marine Rescue Squadron of America, which was so chartered on January 1, 1960, or prior to that date, and which performs only water or boat safety rescue missions within this state, shall be deemed to be a governmental rescue organization within the meaning of subsection (a) of this Code section and need not be licensed by the director of emergency management as provided in the subsection.

(c) The director of emergency management shall promulgate rules and regulations for training and licensing standards for private search and rescue dog teams. The director shall maintain a registry of public and private search and rescue dog teams operating within the state. Any public or private organization which provides rescue services in this state utilizing search and rescue dog teams shall register with the director the name and address of the organization, a 24 hour telephone number to be used for contact during emergencies, the counties in which the search and rescue dog teams provide service, the types of specialized search and rescue dog teams which are available, and such other information as the director may require by rule and regulation. (Ga. L. 1973, p. 74, § 14; Ga. L. 1974, p. 558, § 2; Ga. L. 1976, p. 1590, § 1; Ga. L. 1978, p. 1600, § 1; Ga. L. 1981, p. 389, § 2; Ga. L. 2000, p. 449, § 1.)

ARTICLE 3

EMERGENCY POWERS

OPINIONS OF THE ATTORNEY GENERAL

Minimum age for participation in the rescue operations. — There are no legal bars to amending rules and regulations of the Civil Defense Division (now Emergency Management Division) to lower minimum age for participating in Georgia civil defense (now emergency management) rescue operations from 18 to 16. 1981 Op. Att'y Gen. No. 81-73.

PART 1

GOVERNOR

Editor's notes. — Ga. L. 2004, p. 420, § 3 designated the existing provisions of Article 3 of Chapter 3 of Title 38 as Part 1.

38-3-50. Emergency interim successors to various officials; necessity of declared emergency.

(a) As used in this Code section, the term:

(1) "Disaster" means any happening that causes great harm or damage.

(2) "Emergency" means a sudden generally unexpected occurrence or set of circumstances demanding immediate action.

(3) "Emergency interim successor" means a person designated pursuant to this Code section, in the event an officer is unavailable to exercise the powers and discharge the duties of an office, until a successor is appointed or elected and qualified as may be prescribed

by the Constitution, statutes, laws, charters, and ordinances of this state and its political subdivisions, or until the lawful incumbent or his successor is able to resume the exercise of the powers and the discharge of the duties of the office.

(4) "Local offices and local officers" means positions in the political subdivisions of the state.

(5) "Office" means the position of head of any and all departments, agencies, boards, or commissions of the state or any of its political subdivisions; all constitutional General Assembly offices; all constitutional and other county offices; all of the judgeships of the state and its political subdivisions; and all of the positions in the legislative departments of the state or its political subdivisions.

(6) "Officer" means the individual who shall hold an office.

(7) "Political subdivisions" means cities, counties, towns, villages, authorities, and any other bodies created by the state and exercising any of the governmental powers of the state.

(8) "State office" and "state officer" mean positions in the government of this state.

(9) "Unavailable" means either that a vacancy in an office exists as the result of any emergency as defined in paragraph (2) of this subsection and there is no deputy or other successor authorized to exercise all of the powers and discharge all of the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(b) All state officers shall within 30 days after taking office, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of office, designate by title individuals as emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this Code section to ensure their current status. The officer will designate a sufficient number of such emergency interim successors so that there will be not less than three nor more than seven deputies or emergency interim successors or any combination thereof at any time. In the event that any state officer is unavailable following an emergency or disaster and in the event his deputy, if any, is also unavailable, the powers of his office shall be exercised and the duties of his office shall be discharged by his designated emergency interim successors in the order specified. The emergency successors shall exercise the powers and discharge the duties only until such time as the Governor under the Constitution or authority other than this Code

section, or other official authorized under the Constitution or this Code section to exercise the powers and discharge the duties of the office of Governor, may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed or elected and qualified as provided by law, or until an officer or his deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of his office.

(c) All emergency interim successors designated under this Code section shall have the same qualifications as are prescribed by law for the officer by whom they are designated.

(d) Designations of emergency interim successors to state officers shall become official upon the officer filing a list of the successors with the Secretary of State, who shall inform the Governor, the Georgia Emergency Management Agency, all emergency interim successors to the officer involved, and the judge of the probate court of the county of legal residence of the successors of all such designations and any changes therein. Any designation of an emergency interim successor may be changed or altered by the officer concerned filing a notice of the change or alteration with the Secretary of State.

(e) All constitutional county officers shall within 30 days after taking office, in addition to any deputy authorized pursuant to law to exercise all the powers and discharge the duties of the office, designate by title individuals as emergency interim successors and specify their order of succession. The successors shall have the same powers, duties, and qualifications as specified by subsections (b) and (c) of this Code section for successors to state officers. Designations of the successors shall be made in the same manner as prescribed for successors to state officers in subsection (d) of this Code section.

(f) The legislative bodies of all political subdivisions of the state are authorized and directed to provide by ordinance or resolution for emergency interim successors for the officers of the political subdivisions. The resolutions and ordinances shall not be inconsistent with this Code section.

(g) At the time of their designation, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

(h) Emergency interim successors shall receive the same compensation as is paid the officer by whom they are appointed. The compensa-

tion shall be paid only during such time as a successor shall exercise the powers of the officer by whom he has been designated.

(i) Governmental powers shall be exercised by emergency interim successors appointed under this Code section only during a period of emergency or disaster, as defined by this Code section. (Ga. L. 1958, p. 628, § 1; Ga. L. 1962, p. 469, § 1; Ga. L. 1973, p. 74, § 9; Ga. L. 1992, p. 1258, § 7.)

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Interim successor to judge. — Judge could name a person who is not a public official as the judge's interim successor. 1962 Op. Att'y Gen. p. 32.

Clerk of the superior court should appoint a successor even though the clerk already has four or five deputies as the deputy even though clerk positions as such would terminate when the principal was no longer in office. 1962 Op. Att'y Gen. p. 32.

County commissioners and other county officers have the authority and are directed to designate emergency interim successors for the purpose of continuity of government in the case of an emergency created by an enemy attack. 1965-66 Op. Att'y Gen. No. 66-242.

RESEARCH REFERENCES

ALR. — Effect of declaring an emergency in the enactment of a law without declaring it free from the operation of the referendum, 7 ALR 530.

38-3-51. Emergency powers of Governor; termination of emergency; limitations in energy emergency; immunity.

(a) In the event of actual or impending emergency or disaster of natural or human origin, or pandemic influenza emergency, or impending or actual enemy attack, or a public health emergency, within or affecting this state or against the United States, the Governor may declare that a state of emergency or disaster exists. As a condition precedent to declaring that a state of emergency or disaster exists as a result of a public health emergency, the Governor shall issue a call for a special session of the General Assembly pursuant to Article V, Section II, Paragraph VII of the Constitution of Georgia, which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. The state of emergency or disaster shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with, to the extent that emergency or disaster conditions no longer exist, and terminates the state of emergency or disaster. No state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor. The General Assembly by concurrent resolution may terminate a state of emergency or disaster at any time. Thereupon, the Governor shall by appropriate action end the state of emergency or disaster.

(b) A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to Articles 1 through 3 of this chapter or any other law relating to emergencies or disasters.

(c) The Governor shall have and may exercise for such period as the state of emergency or disaster exists or continues the following additional emergency powers:

(1) To enforce all laws, rules, and regulations relating to emergency management and to assume direct operational control of all civil forces and helpers in the state;

(2) To seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law;

(3) To sell, lend, give, or distribute all or any such property among the inhabitants of the state and to account to the proper agency for any funds received for the property; and

(4) To perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.

(d) In addition to any other emergency powers conferred upon the Governor by law, he may:

(1) Suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(2) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency or disaster;

(3) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(4) Commandeer or utilize any private property if he finds this necessary to cope with the emergency or disaster;

(4.1) Compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for

emergency response. The use of such health care facility may include transferring the management and supervision of the health care facility to the Department of Public Health for a limited or unlimited period of time not extending beyond the termination of the public health emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; provided, however, that any limitation on firearms under this Code section shall not include an individual firearm owned by a private citizen which was legal and owned by that citizen prior to the declaration of state of emergency or disaster or thereafter acquired in compliance with all applicable laws of this state and the United States; and

(9) Make provision for the availability and use of temporary emergency housing.

(e) When the available funds are not sufficient for the purpose of paying the expenses incident to carrying out the provisions authorized by Articles 1 through 3 of this chapter, the Governor may transfer from any available fund in the state treasury such sum as may be necessary to meet the emergency or disaster; and the moneys so transferred shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

(f) In the event that the Governor proclaims an emergency or disaster, as defined by Articles 1 through 3 of this chapter, to be a catastrophe within the meaning of Article III, Section IX, Paragraph VI(b) of the Constitution of the state, the funds referred to in the paragraph may be utilized by the Governor for the purpose of carrying out the provisions authorized by Articles 1 through 3 of this chapter.

(g) In the event that the Governor proclaims an emergency or disaster, as defined in Articles 1 through 3 of this chapter, the Governor may provide welfare benefits to the citizens of this state in the form of grants to meet disaster related necessary expenses or serious needs of individuals or families adversely affected by an emergency or disaster in those cases where the individuals or families are unable to meet the

expenses or needs from other means, provided that such grants are authorized only when matching federal funds are available for such purposes pursuant to the Disaster Relief Act of 1974 (Pub. L. 93-288).

(h) If the Governor declares a state of emergency solely because of an energy emergency, he shall not have the authority to:

(1) Seize, take for temporary use, or condemn property other than energy resources as authorized by paragraph (2) of subsection (c) of this Code section;

(2) Sell, lend, give, or distribute property other than energy resources as authorized by paragraph (3) of subsection (c) of this Code section; or

(3) Commandeer or utilize property other than energy resources as authorized by paragraph (4) of subsection (d) of this Code section.

(i)(1) The Governor may direct the Department of Public Health to coordinate all matters pertaining to the response of the state to a public health emergency including without limitation:

(A) Planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state;

(B) Coordinating public health emergency responses between state and local authorities;

(C) Collaborating with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;

(D) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;

(E) Organizing public information activities regarding state public health emergency response operations; and

(F) Providing for special identification for public health personnel involved in a public health emergency.

(2) The following due process procedures shall be applicable to any quarantine or vaccination program instituted pursuant to a declaration of a public health emergency:

(A) Consonant with maintenance of appropriate quarantine rules, the department shall permit access to counsel in person or by such other means as practicable that do not threaten the integrity of the quarantine;

(B) An order imposing a quarantine or a vaccination program may be appealed but shall not be stayed during the pendency of the

challenge. The burden of proof shall be on the state to demonstrate that there exists a substantial risk of exposing other persons to imminent danger. With respect to vaccination, the state's burden of proof shall be met by clear and convincing evidence. With respect to quarantine, the state's burden of proof shall be met by a preponderance of the evidence;

(C) An individual or a class may challenge the order before any available judge of the superior courts in the county where the individual or a member of the class resides or in Fulton County. Such judge, upon attestation of the exigency of the circumstances, may proceed ex parte with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties. The judge hearing the matter may consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed to determine the interests of a class or classes. The rules of evidence applicable to civil cases shall be applied to the fullest extent practicable taking into account the circumstances of the emergency. All parties shall have the right to subpoena and cross-examine witnesses, but in enforcement of its subpoena powers the court shall take into account the circumstances of the emergency. All proceedings shall be transcribed to the extent practicable. Filing fees shall be waived and all costs borne by the state;

(D) The judge hearing the matter may enter an appropriate order upholding or suspending the quarantine or vaccination order. With respect to vaccination, the order may be applicable on notice to the department or its agents administering the vaccination, or otherwise in the court's discretion. With respect to quarantines, the order shall be automatically stayed for 48 hours;

(E) The department or any party may immediately appeal any order to the Supreme Court pursuant to paragraph (7) of subsection (a) of Code Section 5-6-34. The Supreme Court, or any available Justice thereof in the event that circumstances render a full court unavailable, shall consider the appeal on an expedited basis and may suspend any time requirements for the parties to file briefs. In the event no Justice is available, then a panel of the Court of Appeals, or any Judge thereof in the event that circumstances render a panel unavailable, shall consider the appeal on an expedited basis and may suspend any time requirements for the parties to file briefs. If the trial judge has proceeded ex parte or with counsel appointed for the state, the trial court shall either direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees for appeal shall be waived, all costs shall be borne by the state, and such appeals shall be heard expeditiously; and

(F) No provisions of this paragraph shall be construed to limit or restrict the right of habeas corpus under the laws of the United States.

(j) Any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable to any other individual, partnership, association, or corporation by reason thereof in any action seeking legal or equitable relief. (Ga. L. 1951, p. 224, § 7; Ga. L. 1973, p. 74, § 4; Ga. L. 1974, p. 558, § 1; Ga. L. 1975, p. 1551, § 1; Ga. L. 1977, p. 192, §§ 2, 3; Ga. L. 1981, p. 389, § 2; Ga. L. 1983, p. 3, § 59; Ga. L. 2002, p. 1386, §§ 12, 13, 14, 15; Ga. L. 2009, p. 184, § 4/HB 217; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 701, § 1/HB 339; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, substituted "judge of the superior courts in the county where the individual or a member of the class resides or in Fulton County" for "judge of the state courts, the superior courts, the Court of Appeals, or the Supreme Court" in the first sentence of subparagraph (i)(2)(C); and, in subparagraph (i)(2)(E), substituted the present first and second sentences for the former first sentence, which read: "The department or any party may appeal any order within 24 hours to the Court of Appeals, the Supreme Court, or to any available judge thereof in the event that circumstances render a full court unavailable.", and added the third sentence. The second 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in paragraph (d)(4.1), and in the introductory language of paragraph (i)(1).

Cross references. — Governor's power to postpone or extend qualifying periods for election during state of emergency, § 21-2-50.1. For further provisions regarding emergency powers of Governor, §§ 38-2-6, 38-3-22, 45-12-29 et seq. Power of Public Service Commission to allocate utility service so as to protect public health, safety, and welfare, § 46-2-71.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "Article V, Section II" was substituted for "Article II, Section V" in subsection (a).

U.S. Code. — The federal Disaster Relief Act of 1974, referred to in subsection (g) of this Code section, is codified at 42 U.S.C. § 3231 et seq., and 42 U.S.C. § 5121 et seq.

Law reviews. — For article, "Is Georgia Prepared for a Health Pandemic? Legal Issues Regarding Emergency Preparedness and Declaration of Emergency Health Pandemic in Georgia," see 15 (No. 6) Ga. St. B.J. 30 (2010). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note on the 2002 amendment of this Code section, see 19 Georgia. St. U.L. Rev. 1 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality — Provisions of this statute authorizing the Governor to make grants to individuals under certain prescribed conditions are not inconsistent with the state Constitution. 1975 Op. Att'y Gen. No. 75-147 (see O.C.G.A. § 38-3-51).

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 328 et seq.

ALR. — Recovery of cumulative statutory penalties, 71 ALR2d 986.

38-3-52. Emergency locations — State government; proclamation; effect of official acts.

(a) Whenever, due to an emergency or disaster resulting from manmade or natural causes or enemy attack, it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the normal location of the seat thereof in Atlanta, Fulton County, the Governor, as often as the exigencies of the situation require, shall by proclamation declare an emergency temporary location or locations for the seat of government at such place or places within or outside this state as he may deem advisable under the circumstances and shall take such action and issue such orders as may be necessary for an orderly transition of the affairs of state government to the emergency temporary location or locations. The emergency temporary location or locations shall remain as the seat of government until the General Assembly shall by law establish a new location or locations or until the emergency or disaster is declared to be ended by the Governor and the seat of government is returned to its normal location.

(b) During such time as the seat of government remains at the emergency temporary location or locations, all official acts required by law to be performed at the seat of government by any officer, agency, department, or authority in this state, including the convening and meeting of the General Assembly, shall be as valid and binding when performed at the emergency temporary location or locations as if performed at the normal location of the seat of government. (Ga. L. 1958, p. 691, § 1; Ga. L. 1962, p. 475, § 1; Ga. L. 1973, p. 74, § 10.)

38-3-53. Emergency locations — Meeting of General Assembly; call; suspension of constitutional rules.

The General Assembly shall meet at the new location provided for in Code Section 38-3-52 either upon the call of the Governor or, if no call is issued, through the initiative of the members thereof following an emergency or disaster resulting from manmade or natural causes or enemy attack impending or affecting this state. At such time the General Assembly shall not be limited by any constitutional provisions relating to length of sessions, and it may suspend the operation of any and all constitutional rules governing the procedure of both the House of Representatives and the Senate as it deems necessary during the period of emergency or disaster. (Ga. L. 1962, p. 473, § 1; Ga. L. 1973, p. 74, § 11.)

38-3-54. Emergency locations — Local government; who may call meeting; effect of acts.

Whenever, due to an emergency or disaster resulting from manmade or natural causes or enemy attack, it becomes imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision, including but not limited to each and every city, county, and municipality of the state, may meet at any place within or outside the territorial limits of the political subdivision on the call of the presiding officer or any two members of the governing body and shall proceed to establish and designate by ordinance, resolution, or other manner alternate or substitute sites or places as the emergency temporary location or locations of government where all or any part of the public business may be transacted and conducted during the emergency or disaster situation. The sites or places may be within or outside the territorial limits of the political subdivision and may be within or outside this state. During the period when the public business is being conducted at the emergency temporary location or locations, the governing body and other officers of a political subdivision of this state shall have and possess and shall exercise at the location or locations all of the executive, legislative, and judicial powers and functions conferred upon such body and officers by or under the laws of this state. The powers and functions may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto, and all acts of the body and officers shall be as valid and binding as if performed within the territorial limits of their political subdivision. (Ga. L. 1962, p. 473, § 1; Ga. L. 1973, p. 74, § 12.)

38-3-55. Emergency locations — When authorized; proclamation.

The provisions of Code Sections 38-3-52 through 38-3-54 shall be operative only in the event and for the duration of an emergency or disaster of manmade or natural causes or enemy attack impending on or affecting this state or the United States, as proclaimed by an appropriate state official. (Ga. L. 1962, p. 473, § 3; Ga. L. 1973, p. 74, § 13.)

38-3-56. Registration of businesses during emergency.

Notwithstanding any other provisions of law, the governing authority of any county or municipality may provide by ordinance for a program of emergency registration of all or certain designated classes of businesses doing business in the county or municipality during a state of

emergency declared by the Governor. Such ordinance may be implemented for a period during which the state of emergency continues and for a subsequent recovery period of up to three months at the direction of the governing authority. In any county or municipality adopting such an ordinance, no business subject to the ordinance may do business in the county or municipality without first registering in conformance with the provisions of the ordinance. (Code 1981, § 38-3-56, enacted by Ga. L. 1995, p. 1362, § 3.)

Law reviews. — For note on the 1995 enactment of this Code section, see 12 Georgia. St. U.L. Rev. 31 (1995).

38-3-57. Establishment of standardized, verifiable, performance based unified incident command system; utilization; training; implementation; funding.

(a) The Georgia Emergency Management Agency shall establish and maintain, in collaboration with all appropriate state agencies and volunteer organizations with emergency support function roles and professional organizations that represent local public safety agencies, including the Emergency Management Association of Georgia, the Georgia Association of Police Chiefs, the Georgia Fire Chiefs' Association, and the Georgia Sheriffs' Association, a standardized, verifiable, performance based unified incident command system.

(b) Such system shall be consistent with the Georgia Emergency Operations Plan and shall be utilized in response to emergencies and disasters referenced in the Georgia Emergency Operations Plan, including presidentially declared disasters and states of emergency issued by the Governor.

(c) The Georgia Emergency Management Agency, in cooperation with the Georgia Public Safety Training Center and the State Forestry Commission, shall develop or adopt a course of instruction for use in training and certifying emergency response personnel in unified incident command.

(d) All local public safety and emergency response organizations, including emergency management agencies, law enforcement agencies, fire departments, and emergency medical services, shall implement the standardized unified incident command system provided for in subsection (a) of this Code section by October 1, 2004.

(e) Local agencies that have not established such system by October 1, 2004, shall not be eligible for state reimbursement for any response or recovery related expenses. (Code 1981, § 38-3-57, enacted by Ga. L. 2004, p. 743, § 3; Ga. L. 2012, p. 775, § 38/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "the State Forestry Commission," for "the Georgia Forestry Commission," in subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "roles" was substituted for "roles," and "performance based" was substituted for "performance-based" in subsection (a); and "presidentially" was substituted for "Presidentially" in subsection (b).

Part 2

Judicial Emergency

Cross references. — Domestic terrorism, § 16-4-10. War on Terrorism Local Assistance, T. 36, C. 75.

Editor's notes. — Ga. L. 2004, p. 420, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Judicial Emergency Act of 2004.'"

Ga. L. 2004, p. 420, § 2, not codified by the General Assembly, provides that: "The General Assembly finds that the proper functioning of this state's judicial system is essential to the administration of justice. Further, the General Assembly finds that our courts are subject to being disrupted and the rights of the people are subject to being denied in the event of certain attacks or emergencies, whether natural or man-made in origin. The General Assembly finds that it is in the best interests of the proper functioning of the courts and, ultimately, of the people, to provide our judicial system with a means by which to adjust certain rights, deadlines, and schedules to take into account the potentially devastating effects of a judicial emergency."

38-3-60. Definitions.

As used in this part, the term:

(1) "Authorized judicial official" means any of the following officials when acting with regard to his or her respective jurisdiction:

(A) The Chief Justice of the Georgia Supreme Court;

(B) A chief judge of a Georgia superior court judicial circuit; or

(C) The replacement for or successor to any of the officials set forth in subparagraphs (A) and (B) of this paragraph, as determined by the applicable rules of incapacitation and succession, should such official become incapacitated or otherwise unable to act.

(2) "Judicial emergency" means:

(A) A state of emergency declared by the Governor under Part 1 of this article;

(B) A public health emergency under Code Section 31-12-1.1;

(C) A local emergency under Code Section 36-69-2; or

(D) Such other serious emergency

when, as determined by an authorized judicial official, the emergency substantially endangers or infringes upon the normal functioning of the judicial system, the ability of persons to avail themselves of the judicial system, or the ability of litigants or others to have access to the courts or to meet schedules or time deadlines imposed by court order or rule, statute, or administrative rule or regulation. (Code 1981, § 38-3-60, enacted by Ga. L. 2004, p. 420, § 3; Ga. L. 2011, p. 701, § 2/HB 339.)

The 2011 amendment, effective July 1, 2011, in paragraph (1), deleted former subparagraph (1)(B), which read: "(B) The Chief Judge of the Georgia Court of Appeals;"; redesignated former subparagraphs (1)(C) and (1)(D) as present subparagraphs (1)(B) and (1)(C), respectively, and substituted "subparagraphs (A) and (B)" for "subparagraphs (A) through (C)" in present subparagraph (1)(C).

38-3-61. Declaration of judicial emergency; duration of judicial emergency declaration; designation of alternative facility in lieu of court.

(a) An authorized judicial official is authorized to declare the existence of a judicial emergency which shall be done by order either upon his or her own motion or upon motion by any interested person. The order shall state:

(1) The identity and position of the issuing authorized judicial official;

(2) The time, date, and place at which the order is executed;

(3) The jurisdiction or jurisdictions affected by the order;

(4) The nature of the emergency necessitating the order;

(5) The period or duration of the judicial emergency; and

(6) Any other information relevant to the suspension or restoration of court operations.

(b) An order declaring the existence of a judicial emergency shall be limited to an initial duration of not more than 30 days; provided, however, that the order may be modified or extended for no more than two periods not exceeding 30 days each unless a public health emergency exists as set forth in Code Section 38-3-51, in which case the Chief Justice of the Supreme Court of Georgia may extend the emergency order for so long as such emergency exists, as declared by the Governor. Any modification or extension of the initial order shall require information regarding the same matters set forth in subsection (a) of this Code section for the issuance of the initial order.

(c) In the event the circumstances underlying the judicial emergency make access to the office of a clerk of court or a courthouse impossible

or impractical, the order declaring the judicial emergency shall designate another facility, which is reasonably accessible and appropriate, for the conduct of court business. (Code 1981, § 38-3-61, enacted by Ga. L. 2004, p. 420, § 3; Ga. L. 2011, p. 701, § 3/HB 339.)

The 2011 amendment, effective July 1, 2011, added "unless a public health emergency exists as set forth in Code Section 38-3-51, in which case the Chief Justice of the Supreme Court of Georgia may extend the emergency order for so long as such emergency exists, as declared by the Governor" at the end of the first sentence of subsection (b).

38-3-62. Suspension or tolling of deadlines and time schedules in event of judicial emergency.

An authorized judicial official in an order declaring a judicial emergency, or in an order modifying or extending a judicial emergency order, is authorized to suspend, toll, extend, or otherwise grant relief from deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters, including, but not limited to:

(1) A statute of limitation;

(2) The time within which to issue a warrant;

(3) The time within which to try a case for which a demand for speedy trial has been filed;

(4) The time within which to hold a commitment hearing;

(5) A deadline or other schedule regarding the detention of a juvenile;

(6) The time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury;

(7) The time within which to file a writ of habeas corpus;

(8) The time within which discovery or any aspect thereof is to be completed;

(9) The time within which to serve a party;

(10) The time within which to appeal or to seek the right to appeal any order, ruling, or other determination; and

(11) Such other legal proceedings as determined to be necessary by the authorized judicial official. (Code 1981, § 38-3-62, enacted by Ga. L. 2004, p. 420, § 3; Ga. L. 2006, p. 893, § 6/HB 1421.)

38-3-63. Notification to other judicial officials and public.

Upon an authorized judicial official issuing an order declaring the existence of a judicial emergency, or any modification or extension of such an order, the authorized judicial official issuing the order, modification, or extension to the extent permitted by the circumstances underlying the judicial emergency shall:

(1) Immediately notify the Chief Justice of the Georgia Supreme Court of the action;

(2) Notify and serve a copy of the order, modification, or extension on the judges and clerks of all courts sitting within the jurisdictions affected and on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through reasonable means to assure expeditious receipt; and

(3) Give notice of the issuance of the order, modification, or extension to the affected parties, counsel for the affected parties, and the public. Notice shall be provided by whatever means are reasonably calculated to reach the affected parties, counsel for the affected parties, and the public and may, without limitation, include mailing, publication in a newspaper of local or state-wide distribution, posting of written notices at courthouses and other public gathering sites, transmittal by facsimile or e-mail, and announcements on television, radio, and public address systems. (Code 1981, § 38-3-63, enacted by Ga. L. 2004, p. 420, § 3.)

38-3-64. Appeal rights of adversely affected parties; cost of appeal borne by state.

(a) Any person whose rights or interests are adversely affected by an order declaring the existence of a judicial emergency or any modification or extension of such an order shall be entitled to appeal.

(b) A notice of appeal shall be filed no later than 45 days after the expiration of the judicial emergency order, or any modification or extension of a judicial emergency order, from which an appeal is sought. A notice of appeal shall be filed with the clerk of a superior court in any jurisdiction affected by the order and shall be served upon:

(1) The authorized judicial official who issued the order;

(2) The parties to any criminal proceeding or civil litigation in which the appellant is involved which would be affected by the appeal;

(3) The district attorney of the county in which the notice of appeal is filed; and

(4) All other parties in any criminal proceeding or civil litigation which would be affected by the appeal; provided, however, that service in this regard shall be accomplished by publishing notice of the filing of the appeal in the newspaper which is the legal organ for the county in which the notice of the appeal is filed.

(c) The appeal shall be heard immediately by the Georgia Court of Appeals under the procedure of emergency motions. A party dissatisfied by the judgment of the Georgia Court of Appeals may appeal as a matter of right to the Georgia Supreme Court. Filing fees for these appeals shall be waived. All costs of court shall be borne by the state. Appeals shall be heard expeditiously. (Code 1981, § 38-3-64, enacted by Ga. L. 2004, p. 420, § 3.)

ARTICLE 4

EMERGENCY MANAGEMENT COMPACT

38-3-70 through 38-3-73. .

Repealed pursuant to Code Section 38-3-73, which provided for the repeal of this article on March 1, 2002.

Editor's notes. — This article consisted of Code Sections 38-3-70 through 38-3-73, relating to emergency management, and was based on Ga. L. 1973, p. 459, §§ 1, 2; Ga. L. 1975, p. 1186, § 1; Ga. L. 1982, p. 3, § 38; Code 1981, § 38-3-73, enacted by Ga. L. 1996, p. 497, § 1. As to the contingent repeal of Article 4 of Chapter 3 of Title 38, the repeal of this article became effective March 1, 2002, pursuant to former Code Section 38-3-73, when the substance of the emergency management assistance compact provided by Article 5 of this chapter became effective in Alabama, the last of Georgia's neighboring states to adopt such a compact.

ARTICLE 5

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Editor's notes. — The Congress of the United States consented to the substance of the emergency management assistance compact provided by this article in Pub. L. No. 104-321, 110 Stat. 3877, approved October 19, 1996.

38-3-80. Short title.

This article shall be known and may be cited as the "Emergency Management Assistance Compact." (Code 1981, § 38-3-80, enacted by Ga. L. 1996, p. 497, § 2; Ga. L. 2003, p. 140, § 38.)

38-3-81. Enactment; text.

The Emergency Management Assistance Compact is enacted into law and entered into by the State of Georgia with all other states which adopt the compact in a form substantially as follows:

"EMERGENCY MANAGEMENT ASSISTANCE COMPACT

The contracting states solemnly agree that:

ARTICLE I — PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II — GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for

emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III — PARTY STATE RESPONSIBILITIES

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

(2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV — LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V — LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when

such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI — LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII — SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII — COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX — REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such request; provided, that any aiding party state may assume in whole or in part such loss,

damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X — EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI — IMPLEMENTATION

(a) This compact shall become operative immediately upon its enactment into law by any two states and when Congress has given consent thereto; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their

approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII — VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII — ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code." (Code 1981, § 38-3-81, enacted by Ga. L. 1996, p. 497, § 2; Ga. L. 2003, p. 140, § 38.)

ARTICLE 6

DISASTER VOLUNTEER LEAVE ACT

Cross references. — Use of parolees during natural disasters, § 42-9-44.3.

38-3-90. Short title.

This article shall be known and may be cited as the "Disaster Volunteer Leave Act." (Code 1981, § 38-3-90, enacted by Ga. L. 1998, p. 883, § 1.)

38-3-91. Definitions.

As used in this article, the term:

(1) "Disaster" means a presidentially declared disaster or a state of emergency disaster declared by the Governor of a state.

(2) "State agency" means any department, officer, commission, board, or institution of this state, including the several courts of this state and the General Assembly and its committees or commissions. (Code 1981, § 38-3-91, enacted by Ga. L. 1998, p. 883, § 1.)

38-3-92. Legislative finding.

It is the finding of the General Assembly that natural disasters and disasters created by human agency often arise suddenly and that cooperation among government agencies and volunteer service agencies is vital in coping with such emergencies. The General Assembly further finds that dedicated service by trained and experienced volunteers can help prevent loss and destruction of life and property and that it is in the interest of the state and the citizens of the state to allow certain state employees who are trained and experienced in disaster relief to provide such service for brief periods without loss of pay and benefits. (Code 1981, § 38-3-92, enacted by Ga. L. 1998, p. 883, § 1.)

38-3-93. Authorization for certain employees of state agencies to be granted leave from work with pay in order to participate in specialized disaster relief services.

An employee of a state agency who is a certified disaster service volunteer of the American Red Cross may be granted leave from his or her work with pay for not to exceed 15 workdays in any 12 month period to participate in specialized disaster relief services for the American Red Cross, upon the request of the American Red Cross for the services of that employee and upon the approval of that employee's agency and coordinated through the director of emergency management, without loss of seniority, pay, vacation time, compensatory time, sick time, or earned overtime accumulation. The state agency shall compensate an employee granted leave under this Code section at his or her regular rate of pay for those regular hours during which the employee is absent from work. Leave under this article shall be granted only for the services related to a disaster occurring within this state or in a contiguous state which has a reciprocal statutory provision. (Code 1981, § 38-3-93, enacted by Ga. L. 1998, p. 883, § 1.)

ARTICLE 7

STATE-WIDE ALERT SYSTEM FOR MISSING DISABLED ADULTS

38-3-110 through 38-3-119. Redesignated.

Editor's notes. — Ga. L. 2008, p. 233, § 1/SB 202, effective July 1, 2008, redesignated Code Sections 38-3-110 through 38-3-119 as Code Sections 35-3-170 through 35-3-180, respectively.

ARTICLE 8

ALERT SYSTEM FOR UNAPPREHENDED MURDER OR RAPE SUSPECTS

38-3-120. Redesignated.

Editor's notes. — Ga. L. 2007, p. 47, § 38(7)/SB 103, effective May 11, 2007, redesignated former Code Section 38-3-120 as present Code Section 38-3-130.

Ga. L. 2008, p. 233, § 1/SB 202, purported to amend and redesignate Code Section 38-3-120 as Code Section 35-3-190 but actually amended and redesignated Code Section 38-3-130 as Code Section 35-3-190.

38-3-130. Redesignated.

Editor's notes. — Ga. L. 2008, p. 233, § 1/SB 202, effective July 1, 2008, redesignated former Code Section 38-3-130 as present Code Section 35-3-190.

ARTICLE 9

GEORGIA EMERGENCY MANAGEMENT AGENCY NOMENCLATURE ACT

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Article 9, as enacted by Ga. L. 2008, p. 564, § 1/SB 33, was redesignated as Article 10.

38-3-140. Short title.

This article shall be known and may be cited as the "Georgia Emergency Management Agency Nomenclature Act of 2008." (Code 1981, § 38-3-140, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

38-3-141. Definitions.

As used in this article, the term:

(1) "Badge" means any official badge, identification card, or security pass used by members of the Georgia Emergency Management Agency, either in the past or currently.

(2) "Director" means the director of the Georgia Emergency Management Agency.

(3) "Emblem" means any official patch or other emblem worn currently or formerly or used by the Georgia Emergency Management Agency to identify the agency, a division of the agency, or employees of the agency.

(4) "Person" means any person, corporation, organization, or political subdivision of the State of Georgia.

(5) "Seal" means any official symbol, mark, or abbreviation which represents and is used, currently or in the past, by the Georgia Emergency Management Agency or any other division or operation under the command of the Georgia Emergency Management Agency to identify the agency, a division of the agency, or employees of the agency.

(6) "Willful violator" means any person who knowingly violates the provisions of this article. Any person who violates this article after being advised in writing by the director that such person's activity is in violation of this article shall be considered a willful violator and shall be considered in willful violation of this article. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and in willful violation of this article unless, upon learning of the violation, he or she immediately terminates the agency or other relationship with such violator. (Code 1981, § 38-3-141, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

38-3-142. Use of agency name without written permission prohibited in certain circumstances.

Whoever, except with the written permission of the director, knowingly uses the words "Georgia Emergency Management Agency," "Emergency Management Agency," or "GEMA" in referring to Georgia's Emergency Management Agency in connection with any advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by or associated with the Georgia Emergency Management Agency shall be in violation of this article. (Code 1981, § 38-3-142, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

38-3-143. Use or display of agency symbols without written permission prohibited.

Any person who uses or displays any symbol, including any emblem, seal, or badge, current or historical, used by the Georgia Emergency Management Agency without written permission from the director shall be in violation of this article. (Code 1981, § 38-3-143, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 35-3-143, as enacted by Ga. L. 2008, p. 543, § 1, was redesignated as Code Section 38-3-143.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 38-3-143 is not an offense designated as one that requires fingerprinting. 2009 Op. Att'y Gen. No. 2009-1.

38-3-144. Requests for permission; grants of permission at director's discretion.

Any person seeking permission to use or display the nomenclature or symbols of the Georgia Emergency Management Agency may request such permission in writing to the director. The director shall serve notice on the requesting party within 15 calendar days after receipt of the request of his or her decision on whether the person may use the nomenclature or the symbol. If the director does not respond within the 15 day time period, then the request is presumed to have been denied. The grant of permission under this article shall be at the discretion of the director and under such conditions as the director may impose. (Code 1981, § 38-3-144, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

38-3-145. Injunctions to restrain violations.

Whenever there shall be an actual or threatened violation of this article, the director shall have the right to apply to the Superior Court of Fulton County or to the superior court of the county of residence of the violator for an injunction to restrain the violation. (Code 1981, § 38-3-145, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

38-3-146. Civil penalties for willful violators.

In addition to any other relief or sanction for a violation of this article, the director shall be entitled to collect a civil penalty in the amount of $1,000.00 for each violation from a willful violator. Further, the director shall be entitled to recover reasonable attorney's fees for bringing any action against a willful violator. (Code 1981, § 38-3-146, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

38-3-147. Private cause of action; recovery of treble damages, punitive damages, and attorney's fees.

Any person who has given money or any other item of value to another person due in part to such person's use of agency nomenclature or symbols in violation of this article may maintain a suit for damages against the violator. Where it is proven that the violation was willful, the victim shall be entitled to recover treble damages, punitive damages, and reasonable attorney's fees. (Code 1981, § 38-3-147, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

38-3-148. Criminal penalties for willful violators.

Any willful violator shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $5,000.00 or to imprisonment for not more than 12 months, or both. Each violation shall constitute a separate offense. (Code 1981, § 38-3-148, enacted by Ga. L. 2008, p. 543, § 1/HB 1201.)

ARTICLE 10

STATE-WIDE FIRST RESPONDER BUILDING MAPPING INFORMATION SYSTEM

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Article 9, as enacted by Ga. L. 2008, p. 564, § 1, was redesignated as Article 10.

38-3-150. Legislative findings.

The General Assembly recognizes the extreme dangers present when the safety of our citizens requires first responders such as police and firefighters to evacuate or secure a building. To better prepare for responding to disasters, criminal acts, and acts of terrorism, the General Assembly intends to create a state-wide first responder building mapping information system that will provide first responders with information they need to be successful when disaster strikes. The first responder building mapping information system shall be developed for this limited and specific purpose and does not impose standards or system requirements on any other mapping systems used for any other purpose. (Code 1981, § 38-3-150, enacted by Ga. L. 2008, p. 564, § 1/SB 33.)

38-3-151. Definitions.

As used in this article, the term:

(1) "Agency" means the Georgia Emergency Management Agency established by Code Section 38-3-20.

(2) "Building mapping information system" means a state-wide informational system containing maps of designated public buildings.

(3) "Director" means the director of the agency. (Code 1981, § 38-3-151, enacted by Ga. L. 2008, p. 564, § 1/SB 33.)

38-3-152. Creation and operation of building mapping information system; availability to government agencies; rules and regulations; federal funding sources; exemption of information from public disclosure; recommendations for training guidelines; limitations.

(a) Subject to availability of funds for such purposes, the agency may be authorized to create and operate a building mapping information system and may make grants to local governments for purposes of this article. Once the building mapping information system is operational, the agency shall make the building mapping information available electronically to all state, local, and federal public safety agencies.

(b) Once the building mapping information system is operational, it shall be within the discretion of state and local agencies to determine which government owned or leased buildings, if any, should be mapped, with special consideration given to schools, courthouses, and larger public structures utilized by large numbers of employees or private citizens. Nothing in this article shall require any state or local agency to map any building.

(c) State and local agencies electing to participate in the building mapping information system once such system is operational shall forward to the agency the building mapping information as provided in subsection (d) of this Code section. Any private entity or department or agency of the federal government that desires to participate in such system may also voluntarily forward its building mapping information to the agency. The agency may refuse any information that does not comply with the agency's specifications and requirements.

(d) The agency shall be authorized to develop rules and regulations for the purpose of implementing the provisions of this Code section. Such rules and regulations shall specify:

(1) The type of information to be included in the building mapping information system which shall at a minimum include floor plans, fire protection information, evacuation plans, utility information, known hazards, and text and digital images showing emergency personnel contact information;

(2) The building mapping software standards that shall be utilized by all entities participating in the building mapping information system; and

(3) Security procedures to ensure that the information shall only be made available to the government entity that either owns or operates the building or is responding to an emergency incident at the building.

(e) The agency may be authorized to pursue federal funds or other sources of funding for the creation and operation of the building mapping information system and shall be further authorized to seek or assist state and local agencies in obtaining grants or donations for the mapping of government owned or leased buildings.

(f) Information provided to the agency under this article shall be exempt from public disclosure to the extent provided in paragraph (31) of subsection (a) of Code Section 50-18-72.

(g) The agency may recommend training guidelines regarding use of the building mapping information system for law enforcement officers, firefighters, and other authorized emergency first responders.

(h) Nothing in this Code section supersedes the authority of state departments and agencies and local governments to control and maintain access to information within their independent systems. (Code 1981, § 38-3-152, enacted by Ga. L. 2008, p. 564, § 1/SB 33; Ga. L. 2012, p. 218, § 10/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted "paragraph (31)" for "paragraph (21)" in subsection (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "paragraph" was substituted for "subparagraph" in subsection (f).

38-3-153. Immunity from civil liability.

Local governments and agencies and their employees shall be immune from civil liability for any damages arising out of the creation and use of the building mapping information system unless it is shown that an employee acted with gross negligence or bad faith. (Code 1981, § 38-3-153, enacted by Ga. L. 2008, p. 564, § 1/SB 33.)

CHAPTER 4

VETERANS AFFAIRS

Article 1

Department of Veterans Service

Sec.

38-4-1. Department of Veterans Service and Veterans Service Board — Created; commissioner; officers; appointment; Senate confirmation; term; duties.

38-4-2. Powers; appointment of executive directors of veterans' homes.

38-4-3. Department of Veterans Service and Veterans Service Board — Duty to work consistently and diligently; educational programs; personal appearances; assistance in preparation of claims.

38-4-4. Veterans Service Board — Vacancies.

38-4-5. Veterans Service Board — Meetings; place; purpose; called.

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38-4-7. Commissioner of veterans service — Compensation; payment; duties.

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38-4-9. Commissioner of veterans service — Employment of personnel; preference to veterans, surviving spouses, and dependents; advise Governor, board, and General Assembly.

38-4-10. Commissioner of veterans service — Broad discretion in extending aid; utilize department to fullest.

38-4-11. Commissioner of veterans service — Annual reports; content; recipients.

38-4-12. Commissioner of veterans service — Duty to maintain records.

Article 2

Veterans Benefits

Part 1

Veterans Education

Sec.

38-4-30. Short title.

38-4-31. Purpose of part.

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38-4-33. Department of Veterans Service — Various state educational bodies to cooperate with; full realization of federal benefits.

38-4-34. Department of Veterans Service — Cooperation and coordination with private educational bodies.

38-4-35. Governor authorized to create private educational advisory bodies.

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38-4-50. "War veterans" defined.

38-4-51. Established; locations; adjacent facilities integral part thereof.

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38-4-53. Veterans Service Board — Authorized revenue sources, expenditures, and hiring; other state bodies to cooperate.

38-4-54. Veterans Service Board — Funds received from federal sources expended to aid war

Sec.
veterans; no limitation on additional state aid.
38-4-55. Admissions and discharges; rules and regulations concerning.
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PART 3

GEORGIA VETERANS CEMETERIES

38-4-70. Cemeteries established; eligibility for interment.
Sec.
38-4-71. Control of cemeteries; applications for interment.
38-4-72. Receipt of federal aid and gifts, contributions, bequests, and reimbursements; expenditure; departmental personnel.

Cross references. — Instructional activities focusing on veterans and the armed forces, § 20-2-147. Courtesy nonresident fishing licenses to certain paralyzed or disabled veterans, § 27-2-4.2. Reports on veterans exposed to Agent Orange, T. 31, C. 30. Unemployment benefit rights of persons who entered armed services during period of national emergency, § 34-8-157. Authority of counties, cities, and others to furnish buildings, offices, and meeting halls to nationally recognized veterans' organizations, § 38-1-2. Special license plates for disabled veterans, § 40-2-68 et seq. Special license plates for former prisoners of war, § 40-2-73. Veterans', honorary, and distinctive drivers' licenses, § 40-5-36. Point credit for veterans taking examinations given by state examining boards, § 43-1-9 et seq. License fee exemptions for disabled veterans conducting businesses or peddling operations in counties and municipalities, T. 43, C. 12. Civil service preference for veterans generally, § 45-2-20 et seq.

Editor's notes. — By resolution (Ga. L. 1985, p. 576), the General Assembly designated the North Rome Connector between Highway 53 and Highway 27 in the City of Rome as the "Veterans Memorial Highway." By resolution (Ga. L. 1988, p. 803), the General Assembly authorized the Georgia Veterans of Foreign Wars to place a bust of the late James H. "Sloppy" Floyd in the foyer of the James H. "Sloppy" Floyd Veterans Memorial Building. By resolution (Ga. L. 1988, p. 2071), the General Assembly authorized the Georgia Building Authority to select a site on the grounds of the James H. "Sloppy" Floyd Veterans Memorial Building to erect the Vietnam Memorial.

RESEARCH REFERENCES

ALR. — Constitutionality of welfare acts for veterans of world war, 22 ALR 1542.

Constitutionality of state statutes or ordinances providing for use of public funds or other public property for benefit of persons engaged in military service or veterans of such service, 162 ALR 938.

ARTICLE 1

DEPARTMENT OF VETERANS SERVICE

Cross references. — Veterans Service Board, Ga. Const. 1983, Art. IV, Sec. V, Para. I.

38-4-1. Department of Veterans Service and Veterans Service Board — Created; commissioner; officers; appointment; Senate confirmation; term; duties.

(a) There is created within the state government a Department of Veterans Service. The Department of Veterans Service shall be administered by a commissioner of veterans service and a Veterans Service Board comprised of seven members appointed by the Governor. The commissioner of veterans service shall be the executive officer of the department and shall be charged with the administrative responsibilities of the department in conformity with the orders, rules, and regulations of the Veterans Service Board. The original appointments of the members of the board shall be for terms of one, two, three, four, five, six, and seven years, respectively. Except in cases of vacancy, all terms and appointments of members of the Veterans Service Board after the original appointments shall be for seven years. No person shall be appointed to the Veterans Service Board and no person shall be eligible for the office of commissioner of veterans service except persons who have honorably served not less than three months in the armed services of the United States during a war in which the United States was engaged. All persons serving as members of the board or as commissioner under the terms of this article shall be residents of this state for a period of five years unless they were residents of this state at the time they volunteered, enlisted, or were inducted in the armed services of the United States. There shall be a chairman, vice-chairman, and secretary of the Veterans Service Board annually elected from among its own membership.

(b) The members of the Veterans Service Board shall be confirmed by the Senate. All members of the board and the commissioner of veterans service shall hold office until their successors are appointed and qualified. Any appointment of a member of the board for a full term made when the Senate is not in session shall be effective only until the same is acted upon by the Senate.

(c) As used in this article, the term "commissioner" shall mean the "commissioner of veterans service." (Ga. L. 1896, p. 65, § 5; Penal Code 1910, § 1469; Ga. L. 1923, p. 121, §§ 1, 4; Ga. L. 1926, Ex. Sess., p. 53, § 1; Ga. L. 1931, p. 7, §§ 9, 10; Code 1933, § 78-101; Ga. L. 1945, p. 315, § 1; Ga. L. 1972, p. 1015, § 2301; Ga. L. 1978, p. 2219, § 1; Ga. L. 1983, p. 1401, § 2.)

Cross references. — Veterans Service Board, Ga. Const. 1983, Art. IV, Sec. V, Para. I.

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provides: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

OPINIONS OF THE ATTORNEY GENERAL

Joint responsibility for administration of veterans affairs. — Former Code 1933, §§ 78-101, 78-102, and 78-104 (see O.C.G.A. §§ 38-4-1, 38-4-6, and 38-4-7) place a joint responsibility on the director (now commissioner), as executive officer of the Department of Veterans Service, and the Veterans Service Board in the administration of all matters pertaining to the affairs of veterans. 1945-47 Op. Att'y Gen. p. 462.

Respective duties of board and director. — It is the duty of the Veterans Service Board to prescribe by regulations or orders the broad policies or general plan by which the affairs of the department are to be conducted. The actual duty of executing these policies and directing the day to day activities of the department are vested in the director (now commissioner), who alone has the duty of determining the routine details as to the manner of execution, and the selection, hiring, discharge, and supervision of employees of the department. 1958-59 Op. Att'y Gen. p. 318.

When the board established a policy or rule governing the transaction of the department's business, the board's authority was expended. While it was the duty of the director (now commissioner) to execute, implement, and give effect to all such lawful policies and rules, former Code 1933, § 78-101 et eq. (see O.C.G.A. § 38-4-1 et seq.) did not provide that the board shall itself administer the policies or rules or interfere with the director (now commissioner) in performing the administrative duties vested in the director by law. 1958-59 Op. Att'y Gen. p. 318.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 4, 48 et seq., 80, 81, 137 et seq, 142, 143. 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 21 et seq.

Am. Jur. Pleading and Practice Forms. — 24A Am. Jur. Pleading and Practice Forms, Veterans and Veterans' Laws, § 3.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 21 et seq., 48 et seq., 86 et seq.

38-4-2. Powers; appointment of executive directors of veterans' homes.

(a) The Department of Veterans Service and the Veterans Service Board are authorized:

(1) To apply for and to accept gifts, grants, and other contributions from the federal government or from any other governmental unit;

(2) To use the funds received from the federal government or from any other governmental unit for the purposes authorized and directed by the federal government or such other governmental unit in making the funds available;

(3) To accept and use gifts, grants, donations, and contributions of real estate, both vacant and improved, facilities, moneys, services, or other property from individuals, firms, corporations, organizations, and associations and from county and municipal corporations and their subdivisions, in addition to any funds appropriated by the state; and

(4) To construct and operate hospitals, nursing homes, nursing care homes, assisted living communities, and personal care homes for the use and care of war veterans discharged under other than dishonorable conditions and to pay the cost of construction of the hospitals, nursing homes, nursing care homes, assisted living communities, and personal care homes. The term "cost of the construction" as used in this paragraph shall embrace the cost of construction; the cost of all lands, properties, rights, and easements acquired; the cost of all machinery and equipment; and the cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the construction of any hospitals, nursing homes, nursing care homes, assisted living communities, and personal care homes. The term shall also include administrative expense and such other expenses as may be necessary or incident to the construction of any hospitals, nursing homes, nursing care homes, assisted living communities, and personal care homes; the placing of the same in operation; and the condemnation of property necessary for such construction and operation.

(b)(1) The executive director of the Georgia War Veterans Nursing Home in Augusta, Georgia, shall be appointed by the commissioner of veterans service upon the recommendation of the president of the Georgia Health Sciences University, subject to the approval of the Veterans Service Board.

(2) The executive director of the Georgia State War Veterans' Home in Milledgeville, Georgia, shall be appointed by the commissioner of veterans service upon the recommendation of the chief executive officer of the contractor operator of the home, subject to the approval of the Veterans Service Board. (Ga. L. 1945, p. 319, § 6; Ga. L. 1966, p. 155, § 1; Ga. L. 1991, p. 330, § 1; Ga. L. 2005, p. 1476, § 1/HB 438; Ga. L. 2006, p. 72, § 38/SB 465; Ga. L. 2011, p. 227, § 26/SB 178; Ga. L. 2011, p. 752, § 38/HB 142.)

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, inserted "assisted living communities," throughout paragraph (a)(4). The second 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "Georgia Health Sciences University" for "Medical College of Georgia" in paragraph (b)(1).

Cross references. — Regulation and construction of hospitals and other health care facilities generally, T. 31, C. 7. Authority of Department of Veterans Service to purchase ambulance for transporting veterans among hospitals and facilities, § 50-19-5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a comma was added following "services" in paragraph (a)(3).

OPINIONS OF THE ATTORNEY GENERAL

Department is proper authority to receive federal contributions. — Department of Veterans Service is the proper legal authority to receive gifts, grants, and other contributions from the federal government. 1945-47 Op. Att'y Gen. p. 462.

No authority to charge fees for nursing homes. — Department of Veterans Service is not authorized to charge and collect fees for services rendered to residents of veterans' nursing homes operated by this state. 1979 Op. Att'y Gen. No. 79-5.

General Assembly intended that those veterans placed in state institutions, because of either a lack of space or a lack of appropriate services at the nursing homes, not be charged for services while in these state institutions. As the General Assembly intended that these veterans not be charged, then the General Assembly did not intend that those veterans who were actually in the nursing homes be charged. 1979 Op. Att'y Gen. No. 79-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 3, 230 et seq. 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 1 et seq.

C.J.S. — 6 C.J.S., Armed Services, § 287 et seq. 67 C.J.S., Officers and Public Employees, § 224 et seq.

38-4-3. Department of Veterans Service and Veterans Service Board — Duty to work consistently and diligently; educational programs; personal appearances; assistance in preparation of claims.

(a) The Department of Veterans Service and all officers and employees thereof shall work consistently and diligently in all matters and particularly shall undertake to conduct an educational program for the information of veterans, their surviving spouses, and dependents, as to any and all rights accruing to such veterans under national, state, and local law. The commissioner of veterans service and the members of the board are directed to conduct educational programs by making personal appearances before veterans' organizations, service clubs, fraternal groups, and other such organizations so as to acquaint the public generally with the work of the department and the rights and privileges of veterans.

(b) The commissioner of veterans service, the board, and the department are authorized and directed to make available in any regions, locations, and areas throughout this state representatives of the department to assist veterans, surviving spouses, and dependents in the preparation and filing of claims for benefits and in acquainting them with all legal rights and privileges. (Ga. L. 1945, p. 319, § 12; Ga. L. 1981, p. 700, § 1; Ga. L. 1983, p. 1401, § 3.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

OPINIONS OF THE ATTORNEY GENERAL

Services required notwithstanding overlap with other agencies. — Director (now commissioner) is required to serve Georgia residents who are or have been on active military duty, their families, and dependents. The fact that many of the services authorized to be performed by the Department of Veterans Service are concurrent with and overlap those offered by the federal Veterans Administration or by other agencies does not alter the statutory duty of the department to render such service when requested. 1965-66 Op. Att'y Gen. No. 66-143.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 3, 230 et seq. 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 3 et seq., 26 et seq., 64 et seq., 89 et seq.

C.J.S. — 6 C.J.S., Armed Services, §§ 287 et seq., 327 et seq.

38-4-4. Veterans Service Board — Vacancies.

Subject to confirmation by the Senate at the next session of the General Assembly, all vacancies on the board occasioned by death, resignation, or other cause shall be filled by appointment of the Governor for the unexpired term. (Ga. L. 1945, p. 319, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 143, 145 et seq., 172.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 100 et seq.

38-4-5. Veterans Service Board — Meetings; place; purpose; called.

The Veterans Service Board shall meet once each month and at the meetings shall give attention to all things and matters properly coming under the jurisdiction of the board. The board may meet in the offices of the Department of Veterans Service or at any other location within the state where such board is conducting business pertaining to veterans. The meetings provided for in this Code section shall be for stated regular periods but shall not exceed more than two days in any one session. Called meetings of the board may be held by the chairman thereof or by the commissioner of veterans service. (Ga. L. 1945, p. 319, § 2; Ga. L. 1956, p. 584, § 1; Ga. L. 1983, p. 1401, § 4; Ga. L. 1990, p. 371, § 1.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

OPINIONS OF THE ATTORNEY GENERAL

Site of regular meetings. — Regular meetings of the board may be held at a subdivision branch office. 1950-51 Op. Att'y Gen. p. 230.

Determination of compensation. — Compensation of the board must be determined by the General Assembly. 1954-56 Op. Att'y Gen. p. 635.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 5, 489 et seq., 516, 534, 538.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 270, 271, 275 et seq.

38-4-6. Veterans Service Board — Policy recommendations; appoint commissioner; discharge of commissioner; commissioner's political activity.

(a) The Veterans Service Board shall recommend to the commissioner matters of policy, procedure, and work projects.

(b) The board shall select a commissioner of veterans service, who shall serve for a term of four years and who shall be chief executive and administrative official of the department and the board. The board, however, at any time for good and sufficient cause, properly shown, may dispense with the services of the commissioner after notice has been given to the commissioner and a hearing has been held before the board, at which hearing the commissioner shall be heard in person, by counsel, or both. No person who serves as commissioner shall be eligible, except as provided in subsection (c) of this Code section, to run as a candidate in any primary, special, or general election for any state or federal elective office nor to hold any such office, except as provided in subsection (c) of this Code section, during the time he serves as commissioner and for a period of 12 months after the date he ceases to serve as commissioner.

(c) Notwithstanding subsection (b) of this Code section, nothing contained in this Code section shall prevent the commissioner from being appointed to any such office nor disqualify the commissioner to run in any such elections to succeed himself in any office to which he might have been appointed nor to hold such office in the event he is elected thereto and qualifies under the requirements of law. (Ga. L. 1908, p. 66, § 5; Ga. L. 1931, p. 7, § 10; Code 1933, § 78-104; Ga. L. 1945, p. 319, § 4; Ga. L. 1955, p. 664, § 1; Ga. L. 1983, p. 1401, § 5; Ga. L. 1984, p. 22, § 38.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

OPINIONS OF THE ATTORNEY GENERAL

Joint responsibility for administration of veterans affairs. — Former Code 1933, §§ 78-101, 78-102, and 78-104 (see O.C.G.A. §§ 38-4-1, 38-4-6, and 38-4-7) place a joint responsibility on the director (now commissioner), as executive officer of the Department of Veterans Service, and the Veterans Service Board in the administration of all matters pertaining to the affairs of veterans. 1945-47 Op. Att'y Gen. p. 462.

For procedure required to dispense with director's service. See 1945-47 Op. Att'y Gen. p. 457.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 68 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 37 et seq., 44.

38-4-7. Commissioner of veterans service — Compensation; payment; duties.

(a) Beginning July 1, 1999, the salary of the commissioner shall be set by the Governor and shall be paid in semimonthly installments. Such salary shall include any compensation received from the United States government and the amount of state funds paid shall be reduced by the amount of compensation received from the United States government.

(b) The commissioner, as executive and administrative officer of the Department of Veterans Service and the board, shall be in charge of the administration of all matters pertaining to veterans' affairs under this article and in conformity with rules and regulations of the board.

(c) It shall be the duty of the commissioner:

(1) To effectuate and carry out the laws of the state pertaining to veterans and to perform the duties required of him or her by law and by regulation of the board;

(2) To furnish information to all veterans of all wars in which the United States has engaged as to their rights and benefits under federal legislation, state legislation, or local ordinances;

(3) To assist all veterans, their dependents, and beneficiaries in the preparation and prosecution of claims before appropriate federal governmental departments;

(4) To report any evidence of incompetency, dishonesty, or neglect of duty on the part of any employee of a governmental agency dealing with veterans' affairs to the proper authority; and

(5) Generally to do and perform all things for the promotion of, in the interest of, and for the protection of the veterans of this state as to their rights under all federal and state laws. (Ga. L. 1896, p. 65, § 1; Ga. L. 1906, p. 110, § 1; Ga. L. 1908, p. 66, § 4; Penal Code 1910, § 1471; Ga. L. 1919, p. 280, § 1; Ga. L. 1926, Ex. Sess., p. 53, §§ 1, 2, 4; Ga. L. 1931, p. 7, §§ 9, 11; Code 1933, § 78-102; Ga. L. 1945, p. 319, §§ 4, 5; Ga. L. 1955, p. 664, § 1; Ga. L. 1956, p. 160, § 1; Ga. L. 1957, p. 165, § 1; Ga. L. 1983, p. 1401, § 6; Ga. L. 1999, p. 1213, § 2.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

OPINIONS OF THE ATTORNEY GENERAL

Joint responsibility for administration of veterans affairs. — Former Code 1933, §§ 78-101, 78-102, and 78-104 (see O.C.G.A. §§ 38-4-1, 38-4-6, and 38-4-7) place a joint responsibility on the director (now commissioner), as executive officer of the Department of Veterans Service, and the Veterans Service Board in the administration of all matters pertaining to the affairs of veterans. 1945-47 Op. Att'y Gen. p. 462.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 3, 382 et seq., 489, 503 et seq., 526, 529, 530, 536 et seq., 559.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 234 et seq., 270, 271, 275 et seq.

38-4-8. Commissioner of veterans service — Additional duties.

The commissioner of veterans service shall, in addition to the duties provided in this chapter:

(1) Acquaint himself, his assistants, and employees with the laws, federal, state, and local, enacted for the benefit of members of the armed forces, veterans, their families and dependents, and make studies of and collect data and information as to the facilities and services available to them;

(2) Cooperate with information or service agencies and organizations throughout the state in disseminating and furnishing counsel and assistance of benefit to residents of this state who are or have been members of the armed forces, their families, and dependents, which will show the availability of:

(A) Educational training and retraining facilities;

(B) Health, medical, rehabilitation, and housing services and facilities;

(C) Employment and reemployment services;

(D) Provisions of federal, state, and local laws affording financial rights, privileges, and benefits; and

(E) Other matters of similar, related, or appropriate nature;

(3) Assist veterans, their families, and dependents in the preparation, presentation, proof, and establishment of such claims, privileges, rights, and other benefits accruing to them under federal, state, and local laws; and

(4) Cooperate with all national, state, and local governmental and private agencies securing or offering services or any benefits to veterans, their families, and dependents. (Ga. L. 1923, p. 121, § 4; Ga. L. 1926, Ex. Sess., p. 53, § 3; Ga. L. 1931, p. 7, §§ 10, 11; Code 1933, § 78-105; Ga. L. 1945, p. 319, § 13; Ga. L. 1983, p. 1401, § 7.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

OPINIONS OF THE ATTORNEY GENERAL

Services required notwithstanding overlap with other agencies. — Director (now commissioner) is required to serve Georgia residents who are or have been on active military duty, their families, and dependents. The fact that many of the services authorized to be performed by the Department of Veterans Service are concurrent with and overlap those offered by the federal Veterans Administration or by other agencies does not alter the statutory duty of the department to render such service when requested. 1965-66 Op. Att'y Gen. No. 66-143.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 3, 230 et seq. 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 3 et seq., 26 et seq., 64 et seq., 89 et seq.

C.J.S. — 6 C.J.S., Armed Services, §§ 287 et seq. 67 C.J.S., Officers and Public Employees, § 234 et seq.

38-4-9. Commissioner of veterans service — Employment of personnel; preference to veterans, surviving spouses, and dependents; advise Governor, board, and General Assembly.

The commissioner of veterans service is authorized and directed to employ competent personnel to assist in the administration of the Department of Veterans Service. The commissioner shall give reasonable preference to veterans, their surviving spouses, and dependents in the matter of employment in the department; provided, however, that competency and efficiency shall not be sacrificed because of veteran

affiliation, relationship, or service. It shall be the duty of the commissioner to advise the Governor, the Veterans Service Board, and the General Assembly as to needed veterans' legislation. As executive officer, the commissioner shall have exclusive authority to employ personnel necessary to carry out the purposes of this article and shall define the duties of employees, assign their official stations, and fix their compensation subject to the rules of the State Personnel Board. (Ga. L. 1931, p. 7, § 13; Code 1933, § 78-103; Ga. L. 1945, p. 319, § 8; Ga. L. 1981, p. 700, § 1; Ga. L. 1982, p. 3, § 38; Ga. L. 1983, p. 1401, § 8; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-61/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "rules of the State Personnel Board" for "State Personnel Administration" in the last sentence of this Code section.

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

Cross references. — Fair employment practices in state hiring generally, § 45-19-20 et seq.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 3. 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 116 et seq.

C.J.S. — 6 C.J.S., Armed Services, § 327 et seq.

38-4-10. Commissioner of veterans service — Broad discretion in extending aid; utilize department to fullest.

The commissioner of veterans service shall exercise broad discretion in extending to veterans the aid and assistance provided by law and shall extend the services of the Department of Veterans Service so as to make available to all veterans the aid and services contemplated by law. In rendering the services required, the commissioner is authorized and empowered to advance consistently the interests of veterans of this state and to extend the Department of Veterans Service to its full limit of appropriations and funds provided by law. (Ga. L. 1896, p. 65, § 2; Penal Code 1910, § 1474; Ga. L. 1931, p. 7, § 11; Code 1933, § 78-106; Ga. L. 1945, p. 319, § 10; Ga. L. 1982, p. 3, § 38; Ga. L. 1983, p. 1401, § 9.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

OPINIONS OF THE ATTORNEY GENERAL

Services required notwithstanding overlap with other agencies. — Director (now commissioner) is required to serve Georgia residents who are or have been on active military duty, their families, and dependents. The fact that many of the services authorized to be performed by the Department of Veterans Service are concurrent with and overlap those offered by the Veterans Administration or other agencies does not alter the statutory duty of the department to render such service when requested. 1965-66 Op. Att'y Gen. No. 66-143.

38-4-11. Commissioner of veterans service — Annual reports; content; recipients.

The commissioner of veterans service shall furnish to the Governor, the members of the General Assembly, the Veterans Service Board, veterans' organizations, and the public generally an annual report with reference to claims presented on behalf of veterans of this state, concerning veterans aided under federal, state, or local legislation, and otherwise to report the activities and accomplishments of the Department of Veterans Service. The commissioner of veterans service shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. (Ga. L. 1896, p. 65, § 3; Penal Code 1910, § 1475; Ga. L. 1931, p. 7, § 11; Code 1933, § 78-107; Ga. L. 1945, p. 319, § 7; Ga. L. 1982, p. 3, § 38; Ga. L. 1983, p. 1401, § 10; Ga. L. 2005, p. 1036, § 28/SB 49.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 3, 230 et seq. 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 3 et seq., 26 et seq., 64 et seq., 89 et seq.

C.J.S. — 6 C.J.S., Armed Services, §§ 287 et seq., 327 et seq.

38-4-12. Commissioner of veterans service — Duty to maintain records.

Subject to other laws, the commissioner shall maintain full, adequate, and complete copies of all records pertaining to claims of

veterans who file claims for veterans' benefits through the Department of Veterans Service. (Ga. L. 1945, p. 319, § 9; Ga. L. 1968, p. 1096, § 1; Ga. L. 1982, p. 3, § 38; Ga. L. 1983, p. 1401, § 11.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 29.

ARTICLE 2

VETERANS BENEFITS

Cross references. — Discount on park admission fees for certified disabled veterans, § 12-3-9.1. Lifetime honorary hunting and fishing licenses for disabled veterans, § 27-2-4. Courtesy nonresident fishing licenses to certain paralyzed or disabled veterans, § 27-2-4.2. Appointment of guardians for recipients of veterans benefits, T. 29, C. 6. Disabled veterans and blind persons engaging in peddling, operating businesses, or practicing professions, T. 43, C. 12. Disabled veterans' homestead exemption for ad valorem tax purposes, Ga. Const., 1983, Art. VII, Sec. II, Para. I and § 48-5-48.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations under former Code 1933, § 78-2-18 are included in the annotations for this section.

Purpose of this exempting provision is not to give to the Confederate War pensioner any lien or priority of payment for money deposited in a bank, but to protect the pensioner against garnishment or other legal process sued out by the pensioner's creditor to enforce a debt due by the pensioner to the creditor. Mobley v. Jackson, 171 Ga. 434, 156 S.E. 23 (1930) (decided under former Code 1933, § 78-218).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the issues covered in provisions, decisions under former Code 1933, Ch. 78-2, which dealt with veterans benefits for Confederate War soldiers and sailors and dependents, are included in the annotations for this Code section.

Continuing duty to pay pension. — After a pensioner has once been enrolled, there is a duty to continue to pay the pension to the enrolled pensioner until there is notice of the pensioner's death, provided the pensioner continues residence in this state. 1945-47 Op. Att'y Gen. p. 468.

Presupposition of residence for pension and admission eligibility. — Eligibility for a pension and admission to the confederate home presupposes residence at the time of the passage of Ga. L. 1947, p. 1143. 1948-49 Op. Att'y Gen. p. 289.

Residence status matter of intent. — Fact that pensioner is outside state boundaries does not mean that the pensioner is not a resident of Georgia. Under

the law of this state, residence is largely a matter of intent which may be inferred from a number of circumstances and facts. It is frequently true that an aged pensioner makes protracted visits to children in other states, but if it is the intention of the pensioner to ultimately return to this state, the pensioner would be entitled to continue to receive the pensioner's Georgia pension, and the pension regulations in such cases should be liberally construed so as to give deserving pensioners every benefit of the law and facts in connection with their right to receive pensions. 1945-47 Op. Att'y Gen. p. 468.

Judge must pay the pension on the first day of each month. 1948-49 Op. Att'y Gen. p. 623.

Widow of Civil War soldier entitled to pension. — Widow of a soldier who enlisted and served in the military service of the Confederate States, or in a Georgia regiment or company, or under a Georgia command, or in the organized militia of the State of Georgia during the Civil War, who died in the service or was honorably discharged therefrom, shall be entitled to receive a pension upon proper proof that she is a bona fide resident citizen of this state, that she was married prior to the first day of January, 1920, and that she is presently unmarried. 1950-51 Op. Att'y Gen. p. 133.

RESEARCH REFERENCES

ALR. — Constitutionality of statutes providing for bounty or pension for soldiers, 13 ALR 587; 15 ALR 1359; 147 ALR 1432; 156 ALR 1458.

Statute of limitations in respect of action or proceeding to establish right to, or recovery of benefits of, pension, 136 ALR 809.

Retirement or pension proceeds or annuity payments under group insurance as subject to attachment or garnishment, 28 ALR2d 1213.

Vested right of pensioner to pension, 52 ALR2d 437.

Effect of divorce, remarriage, or annulment, on widow's pension or bonus rights or social security benefits, 85 ALR2d 242.

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee, 5 ALR3d 644.

PART 1

VETERANS EDUCATION

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statutes respecting housing for war veterans, 165 ALR 814.

38-4-30. Short title.

This part shall be known and may be cited as "The Veterans Education Reorganization Act of 1949." (Ga. L. 1947, p. 1143, § 1; Ga. L. 1949, p. 539, § 1; Ga. L. 1982, p. 3, § 38.)

Cross references. — Requirements and procedures for issuing and awarding high school diplomas to honorably discharged World War II veterans, § 20-2-69. Department to fly POW-MIA flag at interstate rest areas, § 32-2-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 142 et seq.

C.J.S. — 6 C.J.S., Armed Services, §§ 297, 300.

38-4-31. Purpose of part.

It is declared to be the public policy of this state and the purpose of this part to assist veterans in securing the educational benefits to which they are entitled under any act of Congress, whenever enacted. (Ga. L. 1947, p. 1143, § 2; Ga. L. 1949, p. 539, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 142 et seq.

C.J.S. — 6 C.J.S., Armed Services, §§ 297, 300.

38-4-32. Department of Veterans Service — Agency to deal with federal government; authority to enter into contracts; administer grants.

The Department of Veterans Service is designated as the agency of this state:

(1) To cooperate with the proper officials of the United States government in the administration of all laws of the United States conferring educational benefits upon veterans, including manual or other training, and to perform on behalf of this state such acts as may be necessary or required of the state, or any agency of the state, by any act of Congress or any regulation or directive of any federal department, agency, or other instrumentality, in the administration of any such law of the United States;

(2) To accept and administer any federal grant to the state for the purposes enumerated in paragraph (1) of this Code section; and

(3) To enter into contracts with the federal government for the training, placing, or supervision of veterans receiving benefits under federal laws and regulations; and for the qualification, approval, certification, and supervision of educational institutions and training establishments contemplated by any federal program for the education and training of war veterans. (Ga. L. 1947, p. 1143, § 8; Ga. L. 1949, p. 539, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 142 et seq.

C.J.S. — 6 C.J.S., Armed Services, § 297, 300.

38-4-33. Department of Veterans Service — Various state educational bodies to cooperate with; full realization of federal benefits.

In order to promote the full realization of all the educational advantages offered to war veterans of this state by reason of any act of Congress, regulation, directive, declaration of policy, or grant of power from the federal government, the State Board of Education, the Department of Education, the State School Superintendent, the Board of Regents and the Chancellor of the University System of Georgia, and all other public education authorities of this state shall cooperate with the Department of Veterans Service in the formulation of such educational and training policies as may conform to accepted standards of efficiency and economy. (Ga. L. 1947, p. 1143, §§ 11, 12, 13; Ga. L. 1949, p. 539, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 142 et seq.

C.J.S. — 6 C.J.S., Armed Services, § 297, 300.

38-4-34. Department of Veterans Service — Cooperation and coordination with private educational bodies.

In the execution of all programs for the education and training of veterans as provided in this part, the Department of Veterans Service shall cooperate with the proper officials of private schools, colleges, and universities of the state which are not under the official jurisdiction of the public educational authorities of the state in the placing of veterans at such institutions for education and training and shall, so far as possible, coordinate the programs of the private institutions with the standards of public institutions. (Ga. L. 1947, p. 1143, § 14; Ga. L. 1949, p. 539, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, § 142 et seq.

C.J.S. — 6 C.J.S., Armed Services, § 297, 300.

38-4-35. Governor authorized to create private educational advisory bodies.

Nothing in this part shall be construed to limit the power of the Governor to create or authorize the formation of such advisory bodies or voluntary groups of citizens, primarily interested in the education of veterans, as may be deemed desirable in developing the recommendation and formulation of sound educational policies covering the professional aspects involved in the execution of this part. (Ga. L. 1949, p. 539, § 7.)

38-4-36. Governor may direct provision of facilities to Department of Veterans Service.

In executing this part, the Governor may direct any department, division, board, bureau, commission, or other administrative agency of the state to provide such facilities, including personnel, materials, assistance, information, and data as will enable the Department of Veterans Service or the commissioner properly to utilize the same in performance of the duties prescribed by this part. (Ga. L. 1947, p. 1143, § 22; Ga. L. 1949, p. 539, § 8; Ga. L. 1983, p. 1401, § 12.)

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

38-4-37. Veterans Service Board empowered to prescribe rules, regulations, and directives to implement programs.

The Veterans Service Board is vested with the full power and authority to make, prescribe, and enforce such reasonable rules, regulations, and directives as, in its judgment, might be necessary to implement fully, in conjunction with agencies of the federal government, the program for the education, training, and rehabilitation of veterans contemplated by state and federal legislation relating thereto; and such rules, regulations, orders, and directives in aid of this legislative scheme shall have the efficacy of law. (Ga. L. 1949, p. 539, § 11.)

Part 2

War Veterans Home

Editor's notes. — By resolution (Ga. L. 1987, p. 742), the General Assembly directed the Department of Veteran Services to designate the Georgia War Veterans Nursing Home as the Joel E. Scott Building and to affix an appropriate

plaque at the entrance of the building identifying it as the "Joel E. Scott Building."

38-4-50. "War veterans" defined.

As used in Code Sections 38-4-51 and 38-4-52, the term "war veterans" means any veterans who were discharged under other than dishonorable conditions and who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during the period beginning January 31, 1955, and ending on May 7, 1975. (Ga. L. 1955, Ex. Sess., p. 18, § 3; Ga. L. 1968, p. 1247, § 1.)

Editor's notes. — This section originally referred to the ending date as the date determined by presidential proclamation declaring a cessation of the Vietnam era, which date was declared to be May 7, 1975. See Presidential Proclamation No. 4373, May 7, 1975, 40 F.R. 20257. See also 38 U.S.C. § 101(29).

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 5, 9.

38-4-51. Established; locations; adjacent facilities integral part thereof.

There is established the Georgia State War Veterans' Home, which shall be available for the use and care of disabled war veterans discharged under other than dishonorable conditions. For the purpose of securing treatment or hospitalization, the adjacent facilities of Central State Hospital are established as an integral part of the Georgia State War Veterans' Home and may be utilized to care for eligible veterans. (Ga. L. 1955, Ex. Sess., p. 18, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Appropriations for construction funds. — Necessary construction funds may legally be obtained by general appropriation of the General Assembly in odd-numbered years or by the legislature making a supplementary appropriation in other years. 1965-66 Op. Att'y Gen. No. 66-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 5, 9, 13 et seq., 78, 79.

C.J.S. — 6 C.J.S., Armed Services, § 306 et seq.

38-4-52. Veterans Service Board — Administer home's facilities.

The facilities of the Georgia State War Veterans' Home shall be under the control and administration of the Veterans Service Board. (Ga. L. 1955, Ex. Sess., p. 18, § 2; Ga. L. 1960, p. 1150, § 1.)

JUDICIAL DECISIONS

Cited in Department of Veterans Servs. v. Robinson, 244 Ga. App. 878, 536 S.E.2d 617 (2000).

38-4-53. Veterans Service Board — Authorized revenue sources, expenditures, and hiring; other state bodies to cooperate.

The Veterans Service Board is designated as the agency of this state to receive federal aid under Title 38, U.S.C., Sections 641 and 642, as amended, and is authorized and directed to receive from the United States Department of Veterans Affairs or any other agency of the United States government authorized to pay federal aid to states for soldiers' homes under Title 38, U.S.C., Sections 641 and 642, as amended, and of any other federal law or act of Congress providing for the payment of funds to states for the care of or support of disabled soldiers and sailors in the state homes. The Veterans Service Board is authorized to receive from any source gifts, contributions, bequests, and individual reimbursements, the receipt of which does not exclude any other source of revenue. All funds received by the Veterans Service Board shall be expended for the care and support of disabled war veterans. At the discretion of the Veterans Service Board, funds received from any source by the Veterans Service Board may be expended in any manner whatsoever for the care and support of disabled war veterans, including the purchase of supplies, food, clothing, equipment, personal and real property, and the erection of suitable buildings, as well as for necessary repairs on existing facilities of the Georgia State War Veterans' Home. The Veterans Service Board is authorized to hire employees, including technical personnel, as necessary in order to carry out this part. At the request of the Veterans Service Board, every officer and employee of the state government shall furnish all information in their possession necessary to enable the Veterans Service Board to carry out properly this part. (Ga. L. 1955, Ex. Sess., p. 18, § 6; Ga. L. 1960, p. 1150, § 3; Ga. L. 1990, p. 45, § 1.)

JUDICIAL DECISIONS

Liability of Veterans Service Board limited. — Department of Veterans Services does not have a non-delegable duty to care for the department's veterans and

the department properly contracted with an independent contractor to run the State War Veterans' Home; thus, in an action based on negligent acts of the contractor resulting in the death of a veteran at the Home, the trial court erred in concluding that the Department could not avail itself of the independent contractor defense. Department of Veterans Servs. v. Robinson, 244 Ga. App. 878, 536 S.E.2d 617 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Authority to accept gifts of real property. — Statute clearly grants authority to the Veterans Service Board to accept gifts of real property from a city. The words "from any source" indicate that potential donors include both private parties and public entities. 1965-66 Op. Att'y Gen. No. 66-14.

Veterans Service Board can only accept a gift of real property so located as to be considered a part of the Rome or Milledgeville State Hospital facilities. 1965-66 Op. Att'y Gen. No. 66-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 9, 13 et seq., 78, 79.

C.J.S. — 6 C.J.S., Armed Services, § 306 et seq.

38-4-54. Veterans Service Board — Funds received from federal sources expended to aid war veterans; no limitation on additional state aid.

All federal funds received by the Veterans Service Board and paid into the state treasury are continually appropriated to the Veterans Service Board in the exact amounts, for the care and support of disabled war veterans, as received from the federal government. This is not intended as a limitation upon the power of the General Assembly to make such additional appropriation to provide for the care and support of disabled veterans as it may from time to time see fit to make. (Ga. L. 1955, Ex. Sess., p. 18, § 7; Ga. L. 1960, p. 1150, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 78, 79.

C.J.S. — 6 C.J.S., Armed Services, § 306 et seq.

38-4-55. Admissions and discharges; rules and regulations concerning.

Admissions to and discharges from any facility of the Georgia State War Veterans' Home shall be under the control of the governing authority of the facility concerned under the laws and department rules and regulations in force at the time application for admission or for discharge is presented; provided, however, that a war veteran shall not

be eligible for admission to the Georgia War Veterans' Nursing Home or the Georgia State War Veterans' Home unless such war veteran has been a resident of this state for a period of at least five years immediately prior to application for admission; provided, further, that the Veterans Service Board may admit and discharge veterans to the Georgia State War Veterans' Home who qualify for care and treatment under Title 38, U.S.C., Section 101 (19) and Section 641 and may adopt appropriate rules consistent with accepted medical considerations to carry out this function. The governing authority of such facility shall exercise appropriate police power and power of restraint over veterans at the Georgia State War Veterans' Home consistent with policies applied to other patients under their care or responsibility. (Ga. L. 1955, Ex. Sess., p. 18, § 4; Ga. L. 1969, p. 633, § 1; Ga. L. 1999, p. 796, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 78, 79.

C.J.S. — 6 C.J.S., Armed Services, § 306 et seq.

ALR. — Hospital's liability for injuries sustained by patient as a result of restraints imposed on movement, 25 ALR3d 1450.

38-4-56. Fee for residency in State War Veterans' Home.

(a) The Veterans Service Board is authorized to provide by rule and regulation for a reasonable fee for residency in and services provided by a facility of the Georgia State War Veterans' Home. The board is authorized to provide by rule and regulation for a full or partial waiver of such fees based on economic need. Such fee waiver shall be established on a sliding scale based on established criteria, including, without limitation, consideration of assets, income, and other resources.

(b) The Department of Veterans Service is authorized to receive, as full or partial payment of any fees charged by a facility of the Georgia State War Veterans' Home, the assignment of any state or federal benefit including, without limitation, aid and attendance benefits paid by the United States Department of Veterans Affairs. (Code 1981, § 38-4-56, enacted by Ga. L. 2012, p. 684, § 1/HB 535.)

Effective date. — This Code section became effective July 1, 2012.

PART 3

GEORGIA VETERANS CEMETERIES

38-4-70. Cemeteries established; eligibility for interment.

(a) The Department of Veterans Service is authorized to establish, operate, and maintain Georgia veterans cemeteries in this state; provided, however, that the Georgia veterans cemetery in existence on July 1, 2002, shall be known as the "Georgia Veterans Memorial Cemetery."

(b) The Department of Veterans Service has the primary responsibility for verifying eligibility for interment in a Georgia veterans cemetery. Eligibility criteria for interment in a Georgia veterans cemetery is the same as required for interment in a national cemetery as provided by federal law and rules and regulations applicable thereto. (Code 1981, § 38-4-70, enacted by Ga. L. 1988, p. 877, § 1; Ga. L. 2000, p. 797, § 1; Ga. L. 2002, p. 1135, § 1; Ga. L. 2005, p. 1479, § 1/HB 440.)

38-4-71. Control of cemeteries; applications for interment.

(a) Each Georgia veterans cemetery shall be under the control and administration of the Department of Veterans Service.

(b) Applications for interment in a Georgia veterans cemetery shall be processed in accordance with rules and regulations promulgated by the Department of Veterans Service. (Code 1981, § 38-4-71, enacted by Ga. L. 1988, p. 877, § 1; Ga. L. 2000, p. 797, § 1; Ga. L. 2002, p. 1135, § 1.)

38-4-72. Receipt of federal aid and gifts, contributions, bequests, and reimbursements; expenditure; departmental personnel.

The Department of Veterans Service is designated as the agency of this state to receive federal aid under Title 38 U.S.C., as amended, and is authorized and directed to receive funds from the United States Department of Veterans Affairs or any other agency of the United States authorized to grant or expend funds to assist a state in establishing, operating, and maintaining a veterans cemetery. The Department of Veterans Service is authorized to receive gifts, contributions, bequests, and individual reimbursements from any source, the receipt of which shall not exclude any other source of revenue. All funds received by the Department of Veterans Service pursuant to this Code section shall be expended to establish, operate, and maintain veterans cemeteries in this state. The Department of Veterans Service is autho-

rized to employ such personnel as it may deem necessary to carry out its duties and responsibilities under this part. (Code 1981, § 38-4-72, enacted by Ga. L. 1988, p. 877, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 2000, p. 797, § 1; Ga. L. 2002, p. 1135, § 1.)

TITLE 39

MINORS

Chap.

1. General Provisions, 39-1-1.
2. Regulation of Employment of Minors, 39-2-1 through 39-2-21.
3. Interstate Compact on Juveniles, 39-3-1 through 39-3-7.
4. Interstate Compact on the Placement of Children, 39-4-1 through 39-4-10.
5. On-line Internet Safety, 39-5-1 through 39-5-4.

Cross references. — Judicial proceedings involving juveniles generally, T. 15, C. 11. Parent and child relationship, adoption, child custody proceedings, T. 19. Incarceration and training of youthful offenders, T. 42, C. 7. Powers and duties of Department of Human Resources relating to children and youth services, § 49-5-1 et seq.

CHAPTER 1

GENERAL PROVISIONS

Sec.
39-1-1. Age of legal majority; residence of persons in state for purpose of attending school.

39-1-1. Age of legal majority; residence of persons in state for purpose of attending school.

(a) The age of legal majority in this state is 18 years; until that age all persons are minors.

(b) Nothing in this Code section shall be construed automatically to render an individual a resident of this state when that individual is in the state for the purpose of attending school. In the case of such individual, his residence will be considered to be the state in which his parents reside if under the laws of that state the individual would still be considered a minor and he is incapable of proving his emancipation. (Orig. Code 1863, § 1742; Code 1868, § 1782; Code 1873, § 1791; Code 1882, § 1791; Civil Code 1895, § 2500; Civil Code 1910, § 3019; Code 1933, § 74-104; Ga. L. 1972, p. 193, § 1.)

Cross references. — Rights of minors generally, § 1-2-8. Age restrictions in regard to purchase of alcoholic beverages, § 3-3-23. Effect of minority status on tolling of limitations, § 9-3-90. Service of process on resident minors over 14 temporarily outside state, § 9-10-70. Appointment of guardian ad litem for minor not otherwise represented in court action, § 9-11-17. Capacity of minors to enter into contracts, § 13-3-20 et seq. Minimum age at which person may be held criminally responsible for his actions, § 16-3-1. Offenses relating to exhibition of lewd or indecent, etc., materials to minors, § 16-12-101 et seq. Penalty for knowingly selling or delivering to minor any drug-related object, § 16-13-1. Domicile of minors generally, § 19-2-4. Age at which persons may contract marriage without parental consent, § 19-3-2. Parental control of children under age of majority, § 19-7-1. Age groups to which compulsory school attendance law applies, § 20-2-690. Further provisions regarding determination of resident status of university students for tuition or fee purposes, § 20-3-66. Guardians of minors, T. 29, C. 4. Minimum age requirements for issuance of driver's license, § 40-5-22. Applications by minors for instruction permits or drivers' licenses, § 40-5-26. Making of certain gifts to persons under age 21, § 44-5-110 et seq. Maximum age for pleading infancy as defense to tort action, § 51-11-6. Minimum age at which person considered capable of making will, § 53-4-10.

Editor's notes. — Ga. L. 1972, p. 193, § 10, effective July 1, 1972, not codified by the General Assembly, provided that the purpose of the Act was to reduce the age of legal majority from 21 years of age to 18 years of age so that all persons, upon reaching the age of 18, would have the rights, privileges, powers, duties, responsibilities, and liabilities previously applicable to persons 21 years of age or over. The section further provided that the Act was not to be construed to have the effect of changing the age from 21 to 18 with respect to any legal instrument or court decree in existence prior to July 1, 1972, when the instrument referred only to "the

age of majority" or words of similar import, except that any guardianship of the person or property of a minor under the provisions of Title 49 of the 1933 Code, whether such guardianship was created by court order or decree entered before or after July 1, 1972, or under the will of a testator which was executed after July 1, 1972, would terminate when the ward for whom such guardianship was created reached 18 years of age.

Law reviews. — For comment on Barnwell v. Cordle, 438 F.2d 236 (5th Cir. 1971), refusing to apply doctrine of parental immunity to suit brought by minor against father's estate, see 8 Ga. St. B.J. 544 (1972).

JUDICIAL DECISIONS

Computation. — One becomes of full age on the day preceding the twenty-first (now eighteenth) anniversary of one's birth, on the first moment of that day. Thomas v. Couch, 171 Ga. 602, 156 S.E. 206 (1930) (decided under prior law).

Ordered support beyond eighteenth birthday a nullity. — Any portion of a verdict and judgment intending to provide for support for any child beyond his or her eighteenth birthday is a nullity. Wilcox v. Wilcox, 242 Ga. 598, 250 S.E.2d 465 (1978).

Parental consent necessary for imposition of support obligation beyond 18. — Without the consent of the husband-father in a child support controversy, neither the jury nor the court can require him to support his minor child beyond the child's eighteenth birthday, and an attempt to do so is a nullity. Ritchea v. Ritchea, 244 Ga. 476, 260 S.E.2d 871 (1979).

Support beyond reduced age of majority in accordance with original agreement. — When the age of majority at the time of divorce was 21, it was proper to continue child support in accordance with the original agreement even though the statute reduced the age of majority to 18. Spivey v. Schneider, 234 Ga. 687, 217 S.E.2d 251 (1975).

Recovery of support by adult child barred. — Right in an adult child to recover support from his father (now parent) beyond the age of majority was barred by former Code 1933, §§ 74-104 and 74-105 (see O.C.G.A. §§ 39-1-1 and 19-7-2, respectively) which provide together that a father's (now parent's) obligation to provide for the maintenance, protection, and education of his child ceases when the child reaches majority. Crane v. Crane, 225 Ga. 605, 170 S.E.2d 392 (1969), (decided under prior law).

No modification of Juvenile Court Code. — Reduction of the age of majority from 21 to 18 did not modify the provisions of the Juvenile Court Code, which still applies to those under the age of 21 years who have committed an act of delinquency before reaching the age of 17. W.F. v. State, 144 Ga. App. 523, 241 S.E.2d 631 (1978).

Minors may not refuse unwanted care. — Georgia provides no "mature minor" exception to the state's general rule that only adults may refuse unwanted medical care. Novak v. Cobb County-Kennestone Hosp. Auth., 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd, 74 F.3d 1173 (11th Cir. 1996).

Workers' compensation. — Provisions of the Workers' Compensation Act, O.C.G.A. § 34-9-1 et seq., are manifestly general and not special laws and operate uniformly upon all minors who are employed under such circumstances as to come under the Workers' Compensation Act, who are 18 years of age or over, and who are not mentally incompetent or physically incapable of earning a livelihood. The legislature has ample power to regulate the age of minority or majority, and may divide minors into two classes, those above and those below a certain age, and endow all those above such age with all the rights of adults in reference to certain kinds of contracts without violating the provision of the Constitution. The effect of such an Act is merely to provide that in reference to certain kinds of contracts the age of majority shall be 18 instead of 21 years. Rourke v. U.S. Fid. & Guar. Co., 187 Ga. 636, 1 S.E.2d 728 (1939) (decided under prior law).

Confessions and statements of juveniles. — West v. United States, 399 F.2d 467 (5th Cir. 1968), cert. denied, 393 U.S. 1102, 89 S. Ct. 903, 21 L. Ed. 2d 795 (1969), which enumerates factors applying to confessions or statements of juveniles is inapposite if the defendant is 18 years or older. White v. State, 251 Ga. 482, 306 S.E.2d 636 (1983).

Cited in McDowell v. Georgia R.R., 60 Ga. 320 (1878); Dent v. Cock, 65 Ga. 400 (1880); Bulloch v. Bulloch, 45 Ga. App. 1, 163 S.E. 708 (1932); Newton v. Newton, 222 Ga. 175, 149 S.E.2d 128 (1966); Ehrhart v. Brooks, 231 Ga. 272, 201 S.E.2d 464 (1973); Gould v. State, 131 Ga. App. 811, 207 S.E.2d 519 (1974); Choquette v. Choquette, 232 Ga. 759, 208 S.E.2d 848 (1974); Marchman v. State, 132 Ga. App. 677, 209 S.E.2d 88 (1974); State v. Gould, 232 Ga. 844, 209 S.E.2d 312 (1974); Whitworth v. Whitworth, 233 Ga. 53, 210 S.E.2d 9 (1974); Herring v. Herring, 233 Ga. 484, 211 S.E.2d 893 (1975); Welch v. State, 237 Ga. 665, 229 S.E.2d 390 (1976); Jones v. Jones, 244 Ga. 32, 257 S.E.2d 537 (1979); Nash v. Nash, 244 Ga. 749, 262 S.E.2d 64 (1979); Woodes v. Morris, 247 Ga. 771, 279 S.E.2d 704 (1981); State v. Hasty, 158 Ga. App. 464, 280 S.E.2d 873 (1981); Blalock v. Anneewakee, Inc., 206 Ga. App. 676, 426 S.E.2d 165 (1992); Penny v. McBride, 282 Ga. App. 590, 639 S.E.2d 561 (2006); Johnson v. Thompson, 286 Ga. App. 810, 650 S.E.2d 322 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Intent of age of majority law. — Ga. L. 1972, p. 193, § 1 was intended to reduce the age at which an individual attained full legal capacity and thereby shed one's civil disabilities; it was not intended to necessarily affect all existing laws setting an age qualification of 21, unless such laws were tied directly to the age of majority. 1972 Op. Att'y Gen. No. 72-118.

Collection of court-ordered support payments existing prior to July 1, 1972. — Department of Probation (now Department of Offender Rehabilitation) should collect child support payments for individuals between 18 and 21 when such payments arise out of court orders in existence prior to July 1, 1972. 1972 Op. Att'y Gen. No. U72-40.

Consent to abortion. — Since the age of majority, and consequently the age of emancipation from legal custody and control of the parent, is 18 years of age, a person 18 years of age or older may consent to an abortion. 1972 Op. Att'y Gen. No. 72-118.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, §§ 1, 3 et seq., 28, 31.

C.J.S. — 43 C.J.S., Infants, § 2.

ALR. — Liability of parent for necessaries furnished to adult child, 42 ALR 150.

Age at which female attains majority, 95 ALR 355.

Calculation of newborn child's age for purposes of life insurance policy requiring that specified age be reached before coverage begins, 37 ALR3d 1448.

Burden of proof of defendant's age, in prosecution where attainment of particular age is statutory requisite of guilt, 49 ALR3d 526.

Statutory change of age of majority as affecting preexisting status or rights, 75 ALR3d 228.

Responsibility of noncustodial divorced parent to pay for, or contribute to, costs of child's college education, 99 ALR3d 322.

CHAPTER 2

REGULATION OF EMPLOYMENT OF MINORS

Sec.

39-2-1. Restrictions on employment of minors under 16 years of age.
39-2-2. Employment of minors under 16 years of age generally — Dangerous employment.
39-2-3. Employment of minors under 16 years of age generally — Hours of work generally.
39-2-4. Employment of minors under 16 years of age generally — Employment during school hours.
39-2-5. Employment of minors under 16 years of age generally — Delivery of messages.
39-2-6. Employment of minors under 16 years of age generally — Sale or delivery of newspapers.
39-2-7. Employment of minors under 16 years of age generally — Maximum hours of employment.
39-2-8. Employment of minors 15 years of age during school vacation months [Repealed].
39-2-9. Employment of minors under 12 years of age generally.
39-2-10. Employment of minors 12 and 13 years of age in wholesale and retail stores [Repealed].
39-2-11. Employment certificates — Required; requirements for issuance.
39-2-11.1. Employment of minors 14 years of age or older during school vacation months for care of lawns, gardens, and shrubbery.
39-2-12. Employment certificates — Contents; furnishing of blank forms; filing of duplicate copies.
39-2-13. Employment certificates — Disposition of certificates upon termination of employment or failure to appear for work for 30 days; requirements as to issuance of subsequent certificates.
39-2-14. Employment certificates — Revocation of certificates by Commissioner of Labor.
39-2-15. Maximum hours of employment of minors; effect of contracts providing longer hours [Repealed].
39-2-16. Prohibition on corporal punishment of minors; actions for damages [Repealed].
39-2-17. Improper dispositions of minor under 12; penalty.
39-2-18. Applicability of provisions of chapter to minors employed as actors or performers.
39-2-19. Enforcement of chapter.
39-2-20. Penalty for violations of chapter.
39-2-21. Injunctions.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1910, § 3149(1), are included in the annotations for this Code section.

Object of statute. — One of the objects of the statute was to prevent the exposure of children under a designated age, and of the employers who would otherwise be called upon to work with such children, to the dangers incident to the presence of these immature and indiscreet persons in work places. Platt v. Southern Photo Material Co., 4 Ga. App. 159, 60 S.E. 1068 (1908), (decided under former Code 1910, § 3149(1)).

Negligence question of fact. — In a case not covered by the statute, the question of the defendant's negligence in employing the young person at the particular occupation is usually one for the jury.

Platt v. Southern Photo Material Co., 4 Ga. App. 159, 60 S.E. 1068 (1908), (decided under former Code 1910, § 3149(1)).

Accepting employment not contributory negligence. — Minor under the age of 14 years, by accepting employment in a cotton mill in violation of statute, is not guilty of contributory negligence proximately causing injuries. International Cotton Mills v. Burnham, 284 F. 351 (5th Cir. 1922) (decided under former Code 1910, § 3149(1)).

Assumption of risks. — Statutory prohibition against employing children under a prescribed age in a factory excludes the defense of the assumptions by the children of risks incident to such employment. Ransom v. Nunnally Co., 26 Ga. App. 222, 105 S.E. 822 (1921), (decided under former Code 1910, § 3149(1)).

Diligence required of children. — Diligence required of children of tender years is not to be measured by the ordinary care required of an adult; but due care in such a child is such care as its capacity, mental and physical, fits it for exercising in the actual circumstances of the occasion and situation. Infants under 14 years of age are chargeable with contributory negligence resulting from a want of such care, and assuming the risk of those patent, obvious, and known dangers which the infants are able to appreciate and avoid. Evans v. Mills, 119 Ga. 448, 46 S.E. 674 (1904), (decided under former Code 1910, § 3149(1)).

Fellow-servant doctrine not applicable. — As a general rule, the master is not liable to one servant for injuries inflicted by a fellow servant because the risk thereof is one of those assumed in the contract of employment. But this doctrine does not apply to infants of tender years and the question of such negligence should be submitted to the jury. Evans v. Mills, 119 Ga. 448, 46 S.E. 674 (1904), (decided under former Code 1910, § 3149(1)).

Provision in an employer's liability policy of insurance to the effect that the policy shall not apply to injuries sustained by any person employed by the insured "in violation of law as to age, or under the age of 14 years if there is no legal age limit," contemplates a violation of statutory law. Savannah Kaolin Co. v. Travelers Ins. Co., 35 Ga. App. 24, 131 S.E. 919 (1926), (decided under former Code 1910, § 3149(1)).

RESEARCH REFERENCES

ALR. — Constitutionality of child labor laws, 12 ALR 1216; 21 ALR 1437.

Right of parent who consents to or acquiesces in employment of child under statutory age to recover for latter's injury or death while in such employment, 40 ALR 1206.

Applicability and effect of workmen's compensation acts in case of injuries to minors, 49 ALR 1435; 60 ALR 847; 83 ALR 416; 142 ALR 1018.

Constitutionality, construction, and application of statute or ordinance relating to child labor in streets, 152 ALR 579.

What is a "factory" within statutes relating to safety and health of employees, 163 ALR 447.

Validity, construction, and effect of court's approval of contract of minor's services, 3 ALR2d 702.

Lawn mowing by minors as violation of child labor statutes, 56 ALR3d 1166.

Statutory change of age of majority as affecting preexisting status or rights, 75 ALR3d 228.

Workers' compensation statute as barring illegally employed minor's tort action, 77 ALR4th 844.

39-2-1. Restrictions on employment of minors under 16 years of age.

No minor under 16 years of age shall be employed by or permitted to work in or about any mill, factory, laundry, manufacturing establishment, or workshop nor in any occupation which has been designated as hazardous in accordance with Code Section 39-2-2. (Ga. L. 1925, p. 291,

§ 1; Code 1933, § 54-301; Ga. L. 1946, p. 67, § 1; Ga. L. 1981, p. 792, § 1.)

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

39-2-2. Employment of minors under 16 years of age generally — Dangerous employment.

No minor under the age of 16 years shall be employed or permitted to work at any occupation or in any position which the Commissioner of Labor may declare by regulation dangerous to life and limb or injurious to the health or morals of such minor. (Ga. L. 1925, p. 291, § 3; Code 1933, § 54-303; Ga. L. 1946, p. 67, § 2; Ga. L. 1981, p. 792, § 2.)

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

JUDICIAL DECISIONS

Sumary judgment upheld as to premises owner. — In a wrongful death action premised on both negligence and negligence per se filed on behalf of a mother's deceased minor son, a premises owner was properly granted summary judgment, as the independent contractor that hired the decedent, and not the premises owner, had sole control over the contractor's personnel, and the son's hazardous occupation on the owner's premises for a third party did not in and of itself demonstrate that the owner was in violation of Georgia's child labor laws; thus, the appeals court declined to reach the issue of whether an owner who knew or had reason to know that its independent contractor was employing a minor under the age of 16 to perform a dangerous occupation on the owner's premises was in violation of O.C.G.A. § 39-2-2. Benson-Jones v. Sysco Food Servs. of Atlanta, LLC, 287 Ga. App. 579, 651 S.E.2d 839 (2007).

Cited in McKinnon v. Streetman, 192 Ga. App. 647, 385 S.E.2d 691 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Fifteen-year-old married minors are not exempt from the prohibition against hazardous occupations contained in O.C.G.A. § 39-2-2. 1986 Op. Att'y Gen. No. 86-5.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statute or ordinance relating to child labor in streets, 152 ALR 579.

Lawn mowing by minors as violation of child labor statutes, 56 ALR3d 1166.

39-2-3. Employment of minors under 16 years of age generally — Hours of work generally.

Except as otherwise provided in this chapter, no minor under 16 years of age shall be permitted to work for any person, firm, or

corporation between the hours of 9:00 P.M. and 6:00 A.M. (Ga. L. 1925, p. 291, § 2; Code 1933, § 54-302; Ga. L. 1946, p. 67, § 3.)

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

OPINIONS OF THE ATTORNEY GENERAL

Married minors not exempt. — Fifteen-year-old married minors are not exempt from the prohibitions relating to hours of work in conjunction with school attendance contained in O.C.G.A. §§ 39-2-3 and 39-2-4, although local boards of education may excuse such minors from school attendance on an individual basis if in accordance with the policies and regulations of the State Board of Education. 1986 Op. Att'y Gen. No. 86-5.

39-2-4. Employment of minors under 16 years of age generally — Employment during school hours.

No minor under 16 years of age shall be employed or permitted to work in any gainful occupation during the hours when public or private schools are in session unless said minor has completed senior high school or has been excused from attendance in school by a county or independent school system board of education in accordance with the general policies and regulations promulgated by the State Board of Education. (Ga. L. 1946, p. 67, § 6.)

Cross references. — Compulsory school attendance, § 20-2-690 et seq.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

OPINIONS OF THE ATTORNEY GENERAL

Obligation of employer to question prospective employee. — Under the provisions of this law, an employer must ask a prospective employee whether the employee is 16 years of age, and whether the employee has graduated from school. 1958-59 Op. Att'y Gen. p. 23.

Married minors not exempt. — Fifteen-year-old married minors are not exempt from the prohibitions relating to hours of work in conjunction with school attendance contained in O.C.G.A. §§ 39-2-3 and 39-2-4, although local boards of education may excuse such minors from school attendance on an individual basis if in accordance with the policies and regulations of the State Board of Education. 1986 Op. Att'y Gen. No. 86-5.

39-2-5. Employment of minors under 16 years of age generally — Delivery of messages.

No minor under 16 years of age shall be employed in the delivery of messages by any person, firm, or corporation engaged in the message service business or in the general work of messenger service between the hours of 9:00 P.M. and 6:00 A.M. (Ga. L. 1910, p. 117, § 1; Code 1933, § 54-305; Ga. L. 1946, p. 67, § 3.)

39-2-6. Employment of minors under 16 years of age generally — Sale or delivery of newspapers.

Minors under 16 years of age may be employed to sell or deliver newspapers in residential areas between the hours of 5:00 A.M. and 9:00 P.M. but shall not be employed to sell or deliver newspapers between the hours of 9:00 P.M. and 5:00 A.M., provided that such employment shall not be for a longer time than is provided in Code Section 39-2-7 and shall not be performed during school hours. (Ga. L. 1946, p. 67, § 4; Ga. L. 1982, p. 3, § 39.)

OPINIONS OF THE ATTORNEY GENERAL

Improper issuance of employment certificate to minors. — Inasmuch as the provisions of Ga. L. 1946, p. 67, § 4 (see O.C.G.A. § 39-2-6) do not provide an exception to the general provisions of Ga. L. 1971, p. 638, § 1 (see O.C.G.A. § 39-2-9), the restrictions of that statute prohibiting employment of children under 14 years of age "in any gainful occupation at any time" would apply to children selling or delivering newspapers; therefore, it would be improper to issue an employment certificate to allow children under 14 years of age to sell or deliver newspapers. 1971 Op. Att'y Gen. No. 71-15.

RESEARCH REFERENCES

ALR. — Constitutionality, validity, construction, and application of statutes or ordinances relating to sale of newspapers on the street, 107 ALR 1275.

39-2-7. Employment of minors under 16 years of age generally — Maximum hours of employment.

No minor under 16 years of age shall be employed or permitted to work in any gainful occupation covered by this chapter for more than four hours on any day in which the school attended by said minor is in session, more than eight hours on days other than school days, or more than 40 hours in any one week. (Ga. L. 1946, p. 67, § 5.)

39-2-8. Employment of minors 15 years of age during school vacation months.

Reserved. Repealed by Ga. L. 1988, p. 1629, § 1, effective July 1, 1988.

Editor's notes. — This Code section was enacted by Ga. L. 1969, p. 674, § 1.

39-2-9. Employment of minors under 12 years of age generally.

No minor under 12 years of age shall be employed or permitted to work in any gainful occupation at any time, provided that this Code

section shall not be construed to apply to employment of a minor in agriculture, domestic service in private homes, or any specific employment permitted by this chapter or to employment by a parent or a person standing in the place of a parent. (Ga. L. 1925, p. 291, § 1; Code 1933, § 54-301; Ga. L. 1946, p. 67, § 1; Ga. L. 1971, p. 638, § 1; Ga. L. 1981, p. 792, § 1.)

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

OPINIONS OF THE ATTORNEY GENERAL

Employment or supervision by parents. — Minor under the age of 12 years may be employed in a business owned and operated by the minor's parent. 1988 Op. Att'y Gen. No. 88-7.

Minor under the age of 12 years could not legally be employed under the parent-employer provision when the parent would be the child's supervisor but would not be his employer. 1988 Op. Att'y Gen. No. 88-7.

Improper issuance of employment certificate to minor. — Inasmuch as the provisions of Ga. L. 1946, p. 67, § 4 (see O.C.G.A. § 39-2-6) do not provide an exception to the general provisions of Ga. L. 1971, p. 638, § 1 (see O.C.G.A. § 39-2-9), the restrictions of that section prohibiting employment of children under 14 years of age "in any gainful occupation at any time" would apply to children selling or delivering newspapers; therefore, it would be improper to issue an employment certificate to allow children under 14 years of age to sell or deliver newspapers. 1971 Op. Att'y Gen. No. 71-15.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 122 et seq. 67A C.J.S., Parent and Child, § 262.

ALR. — Right of parent who consents to or acquiesces in employment of child under statutory age to recover for latter's injury or death while in such employment, 40 ALR 1206.

39-2-10. Employment of minors 12 and 13 years of age in wholesale and retail stores.

Repealed by Ga. L. 1981, p. 792, § 1, effective April 7, 1981.

Editor's notes. — This Code section was based on Code 1933, § 54-303; Ga. L. 1946, p. 67, § 1; Ga. L. 1974, p. 534, § 1.

39-2-11. Employment certificates — Required; requirements for issuance.

(a) No minor between the ages of 12 and 16 years shall be employed by or permitted to work for any person, firm, or corporation unless a certificate, showing the true age of such minor and that such minor is not less than 12 years of age and is physically fit to engage in the employment sought to be obtained, shall be issued by the school superintendent or by some member of his staff authorized by him in

writing, in the county or city where the minor resides or, if a student at a licensed private school, by the principal administrative officer thereof or by some member of his staff authorized by him in writing. A certificate shall also be required for employment of minors between the ages of 16 and 18.

(b) The certificate provided for in subsection (a) of this Code section must show that the minor is 16 years of age to qualify such minor to work between the hours of 9:00 P.M. and 6:00 A.M. and to be employed in any of the occupations covered by Code Section 39-2-2.

(c) No employment certificate shall be issued to any minor until he shall have submitted to the issuing officer:

(1) A certified copy of a birth certificate or birth registration card; and

(2) A statement from the prospective employer indicating that if he were furnished with a certificate from the school superintendent as required by law, he could employ the minor immediately and describing the type of employment offered. It shall be understood that the prospective employer, by furnishing such statement, does not undertake to employ the minor for any specific period of time.

(d) A like certificate, a copy of which shall be made a part of the minor's school file, shall be issued in cases of all minors between the ages of 16 and 18. The certificate must show that the minor is fully 16 years of age in order to qualify the minor to work between the hours of 9:00 P.M. and 6:00 A.M. and to be employed in any of the occupations covered by Code Section 39-2-2. In addition to the certificate, the superintendent of schools, or some member of his staff authorized by him, shall issue an identification card to each minor in this category of employment. The identification card will certify that the minor is eligible for employment. The minor shall be exempt from future filings of employment certificates unless his certificate is revoked by the Commissioner of Labor.

(e)(1) The certificate provided for in subsection (a) of this Code section shall be accompanied by a letter from the minor's school administrator indicating that the minor is enrolled in school full-time and has an attendance record in good standing for the current academic year. The employer of a minor shall maintain a copy of such certificate and letter in the minor's employment file. Such letter shall be updated in January of each subsequent academic year during which the minor maintains his or her employment until such minor reaches the age of 18 years or receives a high school diploma, a general educational development (GED) diploma, a special education diploma, or a certificate of high school completion, or has terminated his or her secondary education and is enrolled in a postsecondary

school. Any employer failing to comply with this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed $1,000.00, up to 12 months' imprisonment, or both, for each violation.

(2) The State Board of Education shall promulgate rules and regulations to provide for the issuance of a waiver or exemption from the provisions of this subsection to a minor, upon such minor's petition, if there is clear and convincing evidence that the enforcement of the provisions of this subsection upon such minor would create an undue hardship upon the minor or the minor's family or if there is clear and convincing evidence that the enforcement of the provisions of this subsection would act as a detriment to the health or welfare of the minor. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3; Ga. L. 2004, p. 107, § 21A; Ga. L. 2010, p. 878, § 39/HB 1387.)

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "12 months' imprisonment" for "twelve months imprisonment" in the last sentence of paragraph (e)(1).

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

JUDICIAL DECISIONS

Sumary judgment upheld as to premises owner. — In a wrongful death action premised on both negligence and negligence per se filed on behalf of a mother's deceased minor son, a premises owner was properly granted summary judgment as the independent contractor that hired the decedent, and not the premises owner, had sole control over its personnel, and the son's hazardous occupation on the owner's premises for a third party did not in and of itself demonstrate that the owner was in violation of Georgia's child labor laws; thus, the appeals court declined to reach the issue of whether an owner who knew or had reason to know that its independent contractor was employing a minor under the age of 16 to perform a dangerous occupation on the owner's premises was in violation of O.C.G.A. § 39-2-2. Benson-Jones v. Sysco Food Servs. of Atlanta, LLC, 287 Ga. App. 579, 651 S.E.2d 839 (2007).

Cited in Summerlin v. S & K of Statesboro, Inc., 124 Ga. App. 25, 183 S.E.2d 92 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 54 et seq.

C.J.S. — 43 C.J.S., Infants, § 122 et seq.

39-2-11.1. Employment of minors 14 years of age or older during school vacation months for care of lawns, gardens, and shrubbery.

Notwithstanding any other provision of this chapter or any rule or regulation of the Commissioner of Labor adopted pursuant to the

provisions of Code Section 39-2-2 to the contrary, a minor 14 years of age or over may be employed during the months of vacation from school in the care and maintenance of lawns, gardens, and shrubbery owned or leased by the employer of such minor, including the operation of equipment in connection therewith, provided the minor is covered by an accident and sickness insurance plan or a workers' compensation insurance policy or plan provided by the employer, the minor presents the employer with the certificate required by Code Section 39-2-11, and the minor is permitted by the employer to care for and maintain only those lawns, gardens, and shrubbery owned or leased by the employer. The work authorized by this Code section includes the care and maintenance of lawns, gardens, and shrubbery on the grounds of mills or factories described in Code Section 39-2-1 and on the grounds of any other factory, mill, or business where employment of the minor within the factory, mill, or business might be prohibited by this chapter or by rules and regulations of the Commissioner of Labor. (Code 1981, § 39-2-11.1, enacted by Ga. L. 1988, p. 583, § 1; Ga. L. 1990, p. 1501, § 2.)

39-2-12. Employment certificates — Contents; furnishing of blank forms; filing of duplicate copies.

(a) Employment certificates shall state the full name, date, and place of birth of the minor; the name and address of the parents, guardian, or other person having custody of such minor; and that the minor has appeared before the issuing officer and presented the evidence of age required by Code Section 39-2-11.

(b) Blank forms of employment certificates and identification cards shall be furnished by the Commissioner of Labor to the school superintendents in the respective cities and counties.

(c) A duplicate copy of each employment certificate shall be filed with the Commissioner of Labor within 30 days from its issuance. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3.)

39-2-13. Employment certificates — Disposition of certificates upon termination of employment or failure to appear for work for 30 days; requirements as to issuance of subsequent certificates.

(a) Upon termination of employment of any minor between 12 and 16 years of age, the employer shall return the employment certificate to the issuing officer within five days of the date of the termination of employment.

(b) Where the employment of any minor between 12 and 16 years of age shall not have been terminated, but the minor shall have failed to

appear for work for a period of 30 days, the employer shall return the employment certificate to the issuing officer within five days of the date of the expiration of the 30 day period.

(c) Upon return to the issuing officer of an employment certificate as provided for in this Code section, a new employment certificate shall be issued to a minor only upon presentation by the minor of a new statement from the prospective employer as provided for in Code Section 39-2-11. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3.)

JUDICIAL DECISIONS

Cited in Benson-Jones v. Sysco Food Servs. of Atlanta, LLC, 287 Ga. App. 579, 651 S.E.2d 839 (2007).

39-2-14. Employment certificates — Revocation of certificates by Commissioner of Labor.

The Commissioner of Labor may at any time revoke any employment certificate if in his judgment the employment certificate was improperly issued. The Commissioner shall be authorized to investigate the true age of any minor employed, hear evidence, and require the production of relevant books or documents. If the employment certificate of a minor is revoked, the employer of the minor at the time of the revocation shall be notified and the minor shall not be employed or permitted to work thereafter until a new and valid employment certificate shall have been obtained. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3.)

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the provisions, decisions under former Code 1910, § 3149(1) are included in the annotations for this Code section.

Evidence where age at issue. — In an action for injuries to an employee under the age of 14 years, who alleged employment in violation of statute, when the child's age was an issue under the pleadings, the child's father's testimony as to conversation with defendant's superintendent after the accident, during which the superintendent urged the father to sign a card, was admissible as against the objection that it was irrelevant. International Cotton Mills v. Burnham, 284 F. 351 (5th Cir. 1922), (decided under former Code 1910, § 3149(1)).

Employer may defend oneself by showing that the employer exercised due diligence to find out the minor's age before employing her; and whether such diligence was exercised was a question for the jury. Ransom v. Nunnally Co., 26 Ga. App. 222, 105 S.E. 822 (1921) (decided under former Code 1910, § 3149(1)).

39-2-15. Maximum hours of employment of minors; effect of contracts providing longer hours.

Reserved. Repealed by Ga. L. 1988, p. 1629, § 2, effective July 1, 1988.

Editor's notes. — This Code section was based on Ga. L. 1853-54, p. 37, §§ 1, 2; Code 1863, § 1847; Code 1868, § 1875; Code 1873, § 1885; Code 1882, § 1885; Civil Code 1895, § 2619; Civil Code 1910, § 3141; Code 1933, § 54-205; Ga. L. 1943, p. 315, § 1.

39-2-16. Prohibition on corporal punishment of minors; actions for damages.

Reserved. Repealed by Ga. L. 1988, p. 1629, § 3, effective July 1, 1988.

Editor's notes. — This Code section was based on Orig. Code 1863, § 1848; Code 1868, § 1876; Code 1873, § 1886; Code 1882, § 1886; Civil Code 1895, § 2620; Civil Code 1910, § 3142; Code 1933, § 54-206.

39-2-17. Improper dispositions of minor under 12; penalty.

(a) Any person who shall sell, apprentice, give away, let out, or otherwise dispose of any minor under 12 years of age to any person for the vocation, occupation, or service of rope or wire walking, begging, or as a gymnast, contortionist, circus rider, acrobat, or clown, or for any indecent, obscene, or immoral exhibition, practice, or purpose shall be guilty of a misdemeanor.

(b) Whenever a minor shall be disposed of in violation of subsection (a) of this Code section, the person who receives and uses any minor for any of the purposes condemned in said subsection shall be guilty of a misdemeanor. (Ga. L. 1878-79, p. 162, § 1; Code 1882, § 4612f; Penal Code 1895, §§ 706, 707; Penal Code 1910, §§ 756, 757; Code 1933, §§ 54-9903, 54-9904.)

Cross references. — Penalty for employment, use, and coercion of person under age 14 to engage in sexually explicit conduct for purpose of producing visual or print medium depicting such conduct, § 16-12-100.

RESEARCH REFERENCES

ALR. — Lawn mowing by minors as violation of child labor statutes, 56 ALR3d 1166.

Validity, construction, and application of statutes regulating sexual performance by child, 21 ALR4th 239; 42 ALR5th 291.

Validity, construction, and application of state statutes or ordinances regulating sexual performance by child, 42 ALR5th 291.

39-2-18. Applicability of provisions of chapter to minors employed as actors or performers.

(a) Notwithstanding any other provisions of this chapter to the contrary, nothing in this chapter shall apply to any minor employed as an actor or performer in motion pictures or theatrical productions, in radio or television productions, in any other performance, concert, or entertainment, or to any minor employed in the making of phonographic records or as an advertising or photographic model, provided that the written consent of the Commissioner of Labor must be first obtained.

(b) Before the Commissioner of Labor shall give his written consent, as provided in subsection (a) of this Code section, he shall investigate and determine:

(1) That the environment in which the work is to be performed is proper for the minor;

(2) That the conditions of employment are not detrimental to the health of the minor;

(3) That the minor's education will not be neglected or hampered by his participation in any of the activities referred to in subsection (a); and

(4) That the minor will not be used for pornographic purposes. (Ga. L. 1978, p. 2208, § 1.)

Cross references. — Penalty for employment, use, and coercion of person under age 14 to engage in sexually explicit conduct for purpose of producing visual or print medium depicting such conduct, § 16-12-100.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969).

39-2-19. Enforcement of chapter.

It shall be the duty of the Department of Labor to enforce this chapter and the Commissioner of Labor shall issue rules and regulations pursuant thereto. (Ga. L. 1925, p. 291, § 5; Code 1933, § 54-306; Ga. L. 1946, p. 67, § 9; Ga. L. 1981, p. 792, § 4.)

RESEARCH REFERENCES

ALR. — Constitutionality of child labor laws, 21 ALR 1437.

39-2-20. Penalty for violations of chapter.

Any person, firm, or corporation or agent thereof violating any of the provisions of this chapter shall be guilty of a misdemeanor. (Ga. L. 1925, p. 291, § 6; Code 1933, § 54-9905; Ga. L. 1946, p. 67, § 8.)

39-2-21. Injunctions.

Any person, firm, or corporation or agent thereof violating any of the provisions of this chapter may be enjoined from employing the minor involved in such violation upon the complaint of the Commissioner of Labor in the superior court of any county in which the employer may be doing business or employing such minor; provided, however, that any court order under this Code section shall be narrowly drawn and narrowly construed so as to provide the minimum possible disruption of the ongoing business affairs of the employer. (Code 1981, § 39-2-21, enacted by Ga. L. 1988, p. 1629, § 4.)

CHAPTER 3

INTERSTATE COMPACT ON JUVENILES

Sec.		Sec.	
39-3-1.	Legislative findings and declaration of policy.	39-3-6.	Responsibilities of state departments, agencies, and officers.
39-3-2.	Execution and text of compact.		
39-3-3.	Compact administrator.	39-3-7.	Additional procedures for return of runaway juveniles not precluded.
39-3-4.	Supplementary agreements.		
39-3-5.	Financial arrangements.		

Law reviews. — For article, "Interstate Cooperative Institutionalization — A Modern Device for Rehabilitation," see 8 J. of Pub. L. 509 (1959). For article, "The Interstate Compact on Juveniles: Development and Operation," see 8 J. of Pub. L. 524 (1959).

OPINIONS OF THE ATTORNEY GENERAL

Effect of compact on matters of adoption. — No provision of the interstate compact on juveniles has any effect on the jurisdiction and authority of superior courts over matters of adoption. 1976 Op. Att'y Gen. No. U76-15.

39-3-1. Legislative findings and declaration of policy.

(a) It is found and declared:

(1) That juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others; and

(2) That the cooperation of this state with other states is necessary to provide for the welfare and protection of juveniles and of the people of this state.

(b) It shall therefore be the policy of this state, in adopting the Interstate Compact on Juveniles, to cooperate fully with other states:

(1) In returning juveniles to such other states whenever their return is sought; and

(2) In accepting the return of juveniles whenever a juvenile residing in this state is found or apprehended in another state and in taking all measures to initiate proceedings for the return of such juveniles. (Ga. L. 1972, p. 784, § 1.)

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 4, 5, 10, 12.

ALR. — Escape from public employee or institution other than correctional or law enforcement employee or institution as criminal offense, 69 ALR3d 625.

39-3-2. Execution and text of compact.

The Governor is authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

ARTICLE I. FINDINGS AND PURPOSES.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party-states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the non-criminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II. EXISTING RIGHTS AND REMEDIES.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III. DEFINITIONS.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time

the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV. RETURN OF RUNAWAYS.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile

upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from the prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the

juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V. RETURN OF ESCAPEES AND ABSCONDERS.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive

him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

Article VI. Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the

appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII. COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES.

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and

necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs.

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b) or VII(d) of this compact.

Article IX. Detention Practices.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X. Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any

other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid.

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII. Compact Administrators.

That the Governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this

compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

Article XV. Severability.

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Article XVI. Interstate Rendition of Juveniles.

(a) This amendment shall provide additional remedies and shall be binding only as among and between those party states specifically executing the same.

(b) All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being delinquent by reason of a violation of any criminal law. Any juvenile, charged with being delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state wherein the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition is filed. (Ga. L. 1972, p. 784, § 2; Ga. L. 1976, p. 1070, § 1.)

Law reviews. — For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L.J. 1075 (1975).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 14, 15.

39-3-3. Compact administrator.

Pursuant to the compact, the Governor is authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator shall serve subject to the pleasure of the Governor. The compact administrator is authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state hereunder. (Ga. L. 1972, p. 784, § 3.)

39-3-4. Supplementary agreements.

The compact administrator is authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (Ga. L. 1972, p. 784, § 4.)

39-3-5. Financial arrangements.

Funds appropriated to any department, division, or agency of this state may be expended for the purpose of carrying out this chapter. Such department, division, or agency, in all programs carried out pursuant to this chapter involving allocation or expenditure of funds, shall be governed and controlled by the "Budget Act," provided for in Part 1 of Article 4 of Chapter 12 of Title 45 and by any appropriation acts and all other laws pertaining to the handling and expenditure of state funds. Subject to this Code section, the compact administrator is authorized to make or arrange to make any payments necessary to discharge any financial obligations imposed upon this state by the compact or any supplementary agreement entered into thereunder. (Ga. L. 1972, p. 784, § 5.)

39-3-6. Responsibilities of state departments, agencies, and officers.

The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. (Ga. L. 1972, p. 784, § 6.)

39-3-7. Additional procedures for return of runaway juveniles not precluded.

In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile. (Ga. L. 1972, p. 784, § 7.)

CHAPTER 4

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Sec.
39-4-1. "Appropriate public authority" defined.
39-4-2. "Appropriate authority in the receiving state" defined.
39-4-3. "Executive head" defined.
39-4-4. Enactment and text of compact.
39-4-5. Appointment of compact administrator.
39-4-6. Supplementary agreements generally.
39-4-7. Effect of placement of child in another state upon jurisdiction of court making placement.
39-4-8. Standards for determination of financial responsibility for children placed pursuant to compact.
39-4-9. Applicability of Code Section 49-5-15 to placements made pursuant to compact.
39-4-10. Satisfaction of requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies.

Cross references. — Compliance with compact in adoption proceedings, § 19-8-4.

Law reviews. — For article, "Interstate Cooperative Institutionalization — A Modern Device for Rehabilitation," see 8 J. of Pub. L. 509 (1959). For annual survey article on workers' compensation law, see 46 Mercer L. Rev. 535 (1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Adoption, §§ 107, 111, 115.

C.J.S. — 2 C.J.S., Adoption of Persons, §§ 46 et seq., 53.

39-4-1. "Appropriate public authority" defined.

As used in Article III of the Interstate Compact on the Placement of Children, the term "appropriate public authorities" means, with reference to this state, the Department of Human Services. The department shall receive and act with reference to notices required by said Article III. (Ga. L. 1977, p. 578, § 3; Ga. L. 2009, p. 453, § 2-2/HB 228.)

JUDICIAL DECISIONS

Cited in In re H.C.S., 170 Ga. App. 551, 318 S.E.2d 59 (1984); H.C.S. v. Grebel, 253 Ga. 404, 321 S.E.2d 321 (1984); H.C.S. v. Grebel, 172 Ga. App. 819, 325 S.E.2d 925 (1984); In the Interest of R.B., 285 Ga. App. 556, 647 S.E.2d 300 (2007).

39-4-2. "Appropriate authority in the receiving state" defined.

As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the term "appropriate authority in the receiving state" means, with reference to this state, the Department of Human Services. (Ga. L. 1977, p. 578, § 4; Ga. L. 2009, p. 453, § 2-2/HB 228.)

39-4-3. "Executive head" defined.

As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the Governor. (Ga. L. 1977, p. 578, § 9.)

39-4-4. Enactment and text of compact.

The Interstate Compact on the Placement of Children is enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I. PURPOSE AND POLICY.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, or officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable

agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not

affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (Ga. L. 1977, p. 578, § 1.)

JUDICIAL DECISIONS

Applicability in adoption proceedings. — When persons seeking to adopt obtained a valid surrender, but were legally precluded from adopting in Georgia, the trial court should have transferred custody to them in order to assist in their pursuit of an Alabama adoption; such action would have been consistent with the Interstate Compact on the Placement of Children, O.C.G.A. § 39-4-4,, the Uniform Child Custody Jurisdiction Act, O.C.G.A. Art. 3, Ch. 9, T. 19, other Georgia statutes, Georgia's public policy, and the best interests of the child. In re Stroh, 240 Ga. App. 835, 523 S.E.2d 887 (1999).

Application in dependency proceedings. — Because the juvenile court did not err in extending a temporary custody order in favor of the Department of Family and Children Services, the Interstate Compact on the Placement of Children, O.C.G.A. § 39-4-4, continued to apply. In the Interest of R.B., 285 Ga. App. 556, 647 S.E.2d 300 (2007).

Retention of jurisdiction in termination proceedings. — South Carolina Department of Social Services (SCDSS) maintained legal custody of the child despite a ruling by a Georgia court granting the parents custody since SCDSS did not abdicate its jurisdiction over the child and was the legal custodian of the child after the child was placed with a paternal uncle and aunt; the parents' action in Georgia was not authorized under the Interstate Compact on the Placement of Children, O.C.G.A. § 39-4-4, as the parents could not force Georgia to divest SCDSS of its jurisdiction. In the Interest of K.W., 261 Ga. App. 654, 583 S.E.2d 509 (2003).

Cited in In the Interest of A.A., 290 Ga. App. 818, 660 S.E.2d 868 (2008).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 1, 307. 81A C.J.S., States, § 67 et seq.

39-4-5. Appointment of compact administrator.

The Governor is authorized to appoint a compact administrator in accordance with the terms of Article VII of the compact. (Ga. L. 1977, p. 578, § 9.)

39-4-6. Supplementary agreements generally.

The officers and agencies of this state and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. (Ga. L. 1977, p. 578, § 5.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 67 et seq.

39-4-7. Effect of placement of child in another state upon jurisdiction of court making placement.

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof. (Ga. L. 1977, p. 578, § 8.)

Cross references. — Court disposition of delinquent children generally, § 15-11-35.

39-4-8. Standards for determination of financial responsibility for children placed pursuant to compact.

Financial responsibility for any child placed pursuant to the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, Articles 1 and 2 of Chapter 11 of Title 19, relating to enforcement of support obligations and other applicable provisions of law may also be invoked. (Ga. L. 1977, p. 578, § 2.)

39-4-9. Applicability of Code Section 49-5-15 to placements made pursuant to compact.

Code Section 49-5-15 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children. (Ga. L. 1977, p. 578, § 7.)

39-4-10. Satisfaction of requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies.

Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under Code Section 49-5-12 shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children. (Ga. L. 1977, p. 578, § 6.)

CHAPTER 5

ON-LINE INTERNET SAFETY

Sec.
39-5-1. Definitions.
39-5-2. Notification to subscribers of products that limit, restrict, or monitor a minor's use of the Internet.
39-5-3. Immunity for computer service providers.
39-5-4. Report of certain information; failure to report required information; penalties.

RESEARCH REFERENCES

Am. Jur. 2d. — Am. Jur. 2d, New Topic Service, Computers and the Internet, § 1 et seq.

39-5-1. Definitions.

As used in this chapter, the term:

(1) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions; provided, however, that such term shall not include an entity that provides access to the Internet using wireless service.

(2) "Internet access provider" means an entity that provides consumers with access to the Internet; provided, however, that such term shall not include an entity that provides access to the Internet using wireless service.

(3) "Internet or any other computer network" means the computer network commonly known as the Internet and any other local, regional, or global computer network that is similar to or is a predecessor or successor of the Internet.

(4) "Minor" means a person who is less than 18 years of age.

(5) "Wireless service" shall have the same meaning as set forth in paragraph (3) of Code Section 46-5-221. (Code 1981, § 39-5-1, enacted by Ga. L. 2008, p. 810, § 2/SB 474; Ga. L. 2009, p. 8, § 39/SB 46.)

39-5-2. Notification to subscribers of products that limit, restrict, or monitor a minor's use of the Internet.

(a) If an Internet access provider knows or has reason to know from registration data in its possession that a subscriber currently resides within this state, such provider shall make available to the subscriber, in accordance with subsection (c) of this Code section, a product or service that enables the subscriber to control a minor's use of the Internet, if such product or service is reasonably and commercially available for the technology used by the subscriber to access the Internet.

(b) The product or service shall enable, in a commercially reasonable manner, the subscriber to:

(1) Block a minor's access to specific websites or domains;

(2) Restrict a minor's access exclusively to specific websites or domains approved by the subscriber; and

(3) Allow the subscriber to monitor a minor's use of the Internet service by providing a report to the subscriber of the specific websites or domains that the minor has visited or has attempted to visit but could not access because the websites or domains were blocked or restricted by the subscriber.

(c) If a product or service described in this Code section is reasonably and commercially available for the technology utilized by the subscriber to access the Internet service, the Internet service provider shall:

(1) Provide to the subscriber, at or near the time of subscription, information about the availability of a product or service described in this Code section; or

(2) Make a product or service described in this Code section available to the subscriber either directly or through a third-party vendor and may charge for the product or service. (Code 1981, § 39-5-2, enacted by Ga. L. 2008, p. 810, § 2/SB 474.)

39-5-3. Immunity for computer service providers.

(a) Telecommunications service providers, wireless service providers, and providers of information services, including, but not limited to Internet service providers and hosting service providers, shall not be liable under this chapter by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications or information services used by others in violation of this chapter.

(b) No provider of an interactive computer service shall be liable under this chapter for:

(1) Identifying, removing, disabling, blocking, or otherwise affecting a user based upon a good faith belief that user's e-mail address, username, or other similar Internet identifier appeared in the National Sex Offender Registry or the state sexual offender registry; or

(2) Failing to identify, block, or otherwise prevent a person from registering for an interactive computer service or failing to remove, disable, or otherwise affect a registered user whose e-mail address, username, or other similar Internet identifier appeared in the National Sex Offender Registry or the state sexual offender registry. (Code 1981, § 39-5-3, enacted by Ga. L. 2008, p. 810, § 2/SB 474.)

39-5-4. Report of certain information; failure to report required information; penalties.

(a) An interactive computer service doing business in this state that obtains knowledge of facts or circumstances from which a violation of any law of this state prohibiting child pornography is apparent shall make a report, as soon as reasonably possible, of such facts and circumstances to the Cyber Tipline at the National Center for Missing and Exploited Children.

(b) Any interactive computer service that knowingly and willfully violates subsection (a) of this Code section shall be guilty of a misdemeanor and upon a second or subsequent conviction shall be guilty of a misdemeanor of a high and aggravated nature. (Code 1981, § 39-5-4, enacted by Ga. L. 2008, p. 810, § 2/SB 474.)

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OFFICIAL CODE OF GEORGIA ANNOTATED

2018 Supplement

Including Acts of the 2018 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 28

2012 Edition

Title 37. Mental Health

Title 38. Military, Emergency Management and Veterans Affairs

Title 39. Minors

Including Annotations to the Georgia Reports and the Georgia Appeals Reports

MERCER UNIVERSITY
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Charlottesville, Virginia

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ISBN 978-0-327-11074-3 (set)
ISBN 978-0-7698-4591-3

393313

(Pub. 41805)

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2018 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2018. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2018.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Seventh Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2018 Regular Session of the General Assembly.

Indices:

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TITLE 37

MENTAL HEALTH

Chap.

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CHAPTER 1

GOVERNING AND REGULATION OF MENTAL HEALTH

Article 1

General Provisions

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Article 2

Powers and Duties of the Department of Behavioral Health and Developmental Disabilities

37-1-20. Obligations of the Department of Behavioral Health and Developmental Disabilities.
37-1-28. Conviction data.
37-1-29. Crisis stabilization unit defined; certification of units; minimum standards and requirements; designation as an emergency receiving facility; legislative intent.

ARTICLE 1

GENERAL PROVISIONS

37-1-1. Definitions.

As used in this title, the term:

(1) "Addictive disease" means a chronic, often relapsing, brain disease that causes compulsive alcohol or drug seeking and use despite harmful consequences to the individual who is addicted and to those around him or her.

(2) "Board" means the Board of Behavioral Health and Developmental Disabilities.

(3) "Commissioner" means the commissioner of behavioral health and developmental disabilities.

(4) "Community service board" means a public mental health, developmental disabilities, and addictive diseases board established pursuant to Code Section 37-2-6.

(5) "Consumer" means a natural person who has been or is a recipient of disability services.

(6) "County board of health" means a county board of health established in accordance with Chapter 3 of Title 31 and includes its duly authorized agents.

(7) "Department" means the Department of Behavioral Health and Developmental Disabilities and includes its duly authorized agents and designees.

(8) "Developmental disability" means a severe, chronic disability of an individual that:

(A) Is attributable to a significant intellectual disability, or any combination of a significant intellectual disability and physical impairments;

(B) Is manifested before the individual attains age 22;

(C) Is likely to continue indefinitely;

(D) Results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living; and

(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic services, individualized sup-

ports, or other forms of assistance which are of lifelong or extended duration and are individually planned and coordinated.

(9) "Disability" means:

(A) Mental or emotional illness;

(B) Developmental disability; or

(C) Addictive disease.

(10) "Disability services" means services to the disabled or services which are designed to prevent or ameliorate the effect of a disability.

(11) "Disabled" means any person or persons having a disability.

(12) "Mental illness" means a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(13) "Mentally ill" means having a mental illness.

(14) "Peace officer" means any federal, city, or county police officer, any officer of the Georgia State Patrol, or any sheriff or deputy sheriff.

(15) "Penal offense" means a violation of a law of the United States, this state, or a political subdivision thereof for which the offender may be confined in a state prison or a city or county jail or any other penal institution.

(16) "Physician" means any person duly authorized to practice medicine in this state under Chapter 34 of Title 43.

(17) "Psychologist" means any person duly licensed to practice psychology in this state under Chapter 39 of Title 43.

(18) "Regional board" means a regional board established in accordance with Code Section 37-2-4.1 as that Code section existed on June 30, 2002.

(19) "Regional coordinator" means an employee of the department who acts as the department's agent and designee to manage community services for consumers of disability services within a mental health, developmental disabilities, and addictive diseases region established in accordance with Code Section 37-2-3.

(20) "Regional office" means an office created pursuant to Code Section 37-2-4.1. Such office shall be an office of the department and serve as the entity for the administration of disability services in a region.

(21) "Regional planning board" means a planning board established in accordance with Code Section 37-2-4.1.

(22) "Regional services administrator" means an employee of the department who, under the supervision of the regional coordinator, manages the purchase or authorization of services, or both, for consumers of disability services, the assessment and coordination of services, and ongoing monitoring and evaluation of services provided within a region established in accordance with Code Section 37-2-3.

(23) "Regional state hospital administrator" means the chief administrative officer of a state owned or state operated hospital and the state owned or operated community programs in a region. The regional state hospital administrator has overall management responsibility for the regional state hospital and manages services provided by employees of the regional state hospital and employees of state owned or operated community programs within a mental health, developmental disabilities, and addictive diseases region established in accordance with Code Section 37-2-3.

(24) "Resident" means a person who is a legal resident of the State of Georgia.

(25) "State mental health facility" means, for purposes of this title and Title 31, a hospital, inpatient unit, or other institution operated by or under contract with the department for its operation, including the replacement or reorganization of the facility. (Ga. L. 1958, p. 697, § 1; Ga. L. 1960, p. 837, § 1; Code 1933, § 88-501, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1991, p. 1059, § 6; Ga. L. 1993, p. 1445, § 5; Ga. L. 1994, p. 97, § 37; Ga. L. 2002, p. 1324, §§ 1-6, 2-1; Ga. L. 2006, p. 310, § 2/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2016, p. 257, § 7/SB 319.)

The 2016 amendment, effective April 26, 2016, substituted the present provisions of paragraph (17) for the former provisions, which read: "'Psychologist' means any person authorized under the laws of this state to practice as a licensed psychologist as set forth in paragraph (3) of Code Section 43-39-1."

Editor's notes. — Ga. L. 2016, p. 257, § 1/SB 319, not codified by the General Assembly, provides: "The General Assembly finds that the mental health and wellness needs of Georgia's citizens require the availability of trained mental health professionals who can accurately diagnose, treat, prescribe, and appropriately assess the mental and emotional illnesses, disorders, and conditions from which they suffer and the vocational, educational, interpersonal, and intrapersonal needs essential to living and learning how to live productive and useful lives. It is the intent of the General Assembly to assure geographical and financial access for all of Georgia's citizens to excellent mental health services to the extent that Georgia's resources and regulations permit. To these ends, Georgia regulates its licensed psychiatrists, psychologists, professional counselors, marriage and family therapists, and clinical social workers who provide graduate level professional services to Georgia's private and public mental health services and to its public mental health, educational, and vocational support systems. The General Assembly seeks in such regulatory process to protect the public and assure it receives high quality and appropriate services and to define the scopes of practice and diagnos-

tic authority for each of these professional groups consistent with the graduate level training and supervision, or its equivalent, that the members of each profession have sought and successfully completed. The General Assembly has empowered and authorized the Georgia Composite Medical Board, the State Board of Examiners of Psychologists, and the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists to fulfill these responsibilities and expects them to work together to assure a continuum of professional services that ensure appropriate diagnostic and assessment functions for each profession and the psychotherapeutic and counseling treatment services appropriate to each profession. The General Assembly recognizes that advances in medicine, science, education, training, and service delivery occur constantly in our modern history and therefore also expects the regulatory boards for each profession to assure that its licensees seek and successfully complete appropriate continuing education and training for the functions and services authorized to each profession."

ARTICLE 2

POWERS AND DUTIES OF THE DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

37-1-20. Obligations of the Department of Behavioral Health and Developmental Disabilities.

The department shall:

(1) Establish, administer, and supervise the state programs for mental health, developmental disabilities, and addictive diseases;

(2) Direct, supervise, and control the medical and physical care and treatment; recovery; and social, employment, housing, and community supports and services based on single or co-occurring diagnoses provided by the institutions, contractors, and programs under its control, management, or supervision;

(3) Plan for and implement the coordination of mental health, developmental disability, and addictive disease services with physical health services, and the prevention of any of these diseases or conditions, and develop and promulgate rules and regulations to require that all health services be coordinated and that the public and private providers of any of these services that receive state support notify other providers of services to the same patients of the conditions, treatment, and medication regimens each provider is prescribing and delivering;

(4) Ensure that providers of mental health, developmental disability, or addictive disease services coordinate with providers of primary and specialty health care so that treatment of conditions of the brain

and the body can be integrated to promote recovery, health, and well-being;

(5) Have authority to contract, including performance based contracts which may include financial incentives or consequences based on the results achieved by a contractor as measured by output, quality, or outcome measures, for services with community service boards, private agencies, and other public entities for the provision of services within a service area so as to provide an adequate array of services and choice of providers for consumers and to comply with the applicable federal laws and rules and regulations related to public or private hospitals; hospital authorities; medical schools and training and educational institutions; departments and agencies of this state; county or municipal governments; any person, partnership, corporation, or association, whether public or private; and the United States government or the government of any other state;

(6) Establish and support programs for the training of professional and technical personnel as well as regional advisory councils and community service boards;

(7) Have authority to conduct research into the causes and treatment of disability and into the means of effectively promoting mental health and addictive disease recovery;

(8) Assign specific responsibility to one or more units of the department for the development of a disability prevention program. The objectives of such program shall include, but are not limited to, monitoring of completed and ongoing research related to the prevention of disability, implementation of programs known to be preventive, and testing, where practical, of those measures having a substantive potential for the prevention of disability;

(9) Establish a system for local administration of mental health, developmental disability, and addictive disease services in institutions and in the community;

(10) Make and administer budget allocations to fund the operation of mental health, developmental disabilities, and addictive diseases facilities and programs;

(11) Coordinate in consultation with providers, professionals, and other experts the development of appropriate outcome measures for client centered service delivery systems;

(12) Establish, operate, supervise, and staff programs and facilities for the treatment of disabilities throughout this state;

(13) Disseminate information about available services and the facilities through which such services may be obtained;

(14) Supervise the local office's exercise of its responsibility concerning funding and delivery of disability services;

(15) Supervise the local offices concerning the administration of grants, gifts, moneys, and donations for purposes pertaining to mental health, developmental disabilities, and addictive diseases;

(16) Supervise the administration of contracts with any hospital, community service board, or any public or private providers without regard to regional or state boundaries for the provision of disability services and in making and entering into all contracts necessary or incidental to the performance of the duties and functions of the department and the local offices;

(17) Regulate the delivery of care, including behavioral interventions and medication administration by licensed staff, or certified staff as determined by the department, within residential settings serving only persons who are receiving services authorized or financed, in whole or in part, by the department;

(18) Classify host homes for persons whose services are financially supported, in whole or in part, by funds authorized through the department. As used in this Code section, the term "host home" means a private residence in a residential area in which the occupant owner or lessee provides housing and provides or arranges for the provision of food, one or more personal services, supports, care, or treatment exclusively for one or two persons who are not related to the occupant owner or lessee by blood or marriage. A host home shall be occupied by the owner or lessee, who shall not be an employee of the same community provider which provides the host home services by contract with the department. The department shall approve and enter into agreements with community providers which, in turn, contract with host homes. The occupant owner or lessee shall not be the guardian of any person served or of their property nor the agent in such person's advance directive for health care. The placement determination for each person placed in a host home shall be made according to such person's choice as well as the individual needs of such person in accordance with the requirements of Code Section 37-3-162, 37-4-122, or 37-7-162, as applicable to such person;

(19) Provide guidelines for and oversight of host homes, which may include, but not be limited to, criteria to become a host home, requirements relating to physical plants and supports, placement procedures, and ongoing oversight requirements;

(20) Supervise the regular visitation of disability services facilities and programs in order to assure contracted providers are licensed and accredited by the designated agencies prescribed by the department, and in order to evaluate the effectiveness and appropriateness

of the services, as such services relate to the health, safety, and welfare of service recipients, and to provide technical assistance to programs in delivering services;

(21) Establish a unit of the department which shall receive and consider complaints from individuals receiving services, make recommendations to the commissioner regarding such complaints, and ensure that the rights of individuals receiving services are fully protected;

(22) With respect to housing opportunities for persons with mental illness and co-occurring disorders:

(A) Coordinate the department's programs and services with other state agencies and housing providers;

(B) Facilitate partnerships with local communities;

(C) Educate the public on the need for supportive housing;

(D) Collect information on the need for supportive housing and monitor the benefit of such housing; and

(E) Identify and determine best practices for the provision of services connected to housing;

(23) Exercise all powers and duties provided for in this title or which may be deemed necessary to effectuate the purposes of this title;

(24) Assign specific responsibility to one or more units of the department for the development of programs designed to serve disabled infants, children, and youth. To the extent practicable, such units shall cooperate with the Georgia Department of Education and the University System of Georgia in developing such programs;

(25) Have the right to designate private institutions as state institutions; to contract with such private institutions for such activities, in carrying out this title, as the department may deem necessary from time to time; and to exercise such supervision and cooperation in the operation of such designated private institutions as the department may deem necessary;

(26) Establish policies and procedures governing fiscal standards and practices of community service boards and their respective governing boards; and

(27) Coordinate the establishment and operation of a data base and network to serve as a comprehensive management information system for disability services and programs. (Code 1933, §§ 88-601, 88-602, 88-603, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-603, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1982, p. 3, § 37;

Ga. L. 1987, p. 3, § 37; Ga. L. 1993, p. 1445, § 7; Ga. L. 2002, p. 1324, § 1-6; Ga. L. 2003, p. 558, §§ 5, 6; Ga. L. 2008, p. 263, § 2/SB 469; Ga. L. 2009, p. 8, § 37/SB 46; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2014, p. 309, § 1/SB 349; Ga. L. 2015, p. 1361, § 1/HB 512.)

The 2014 amendment, effective April 16, 2014, inserted ", including performance based contracts which may include financial incentives or consequences based on the results achieved by a contractor as measured by output, quality, or outcome measures," near the beginning of paragraph (5); deleted "and" at the end of paragraph (23); substituted "; and" for a period at the end of paragraph (24); and added paragraph (25).

The 2015 amendment, effective July 1, 2015, substituted "advisory councils" for "planning boards" in paragraph (6); substituted "local administration" for "regional administration" in paragraph (9); deleted "to regional offices established by the board pursuant to Code Section 37-2-4.1" following "budget allocations" in paragraph (10); substituted "the local office's exercise of its responsibility concerning" for "the regional office's exercise of its responsibility and authority concerning" in paragraph (14); substituted "local offices concerning the administration" for "regional offices concerning the receipt and administration" in paragraph (15); substituted "local offices" for "regional offices" in paragraph (16); added paragraph (20); redesignated former paragraphs (20) through (25) as present paragraphs (21) through (26), respectively; deleted "and" at the end of paragraph (25); substituted "; and" for a period at the end of paragraph (26); and added paragraph (27).

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

37-1-27. Legislative findings; Suicide Prevention Program; implementation.

Cross references. — Training of public school personnel in suicide prevention and awareness; no duty of care imposed, § 20-2-779.1.

37-1-28. Conviction data.

(a) As used in this Code section, the term "conviction data" means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department or its contractors is considering as a final selectee for employment in a position the duties of which involve direct care, treatment, custodial responsibilities, or any combination thereof for its clients. The department may also receive conviction data which is relevant to a person whom the department or its contractors is considering as a final selectee for employment in a position if, in the judgment of the

employer, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public, or other employees.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (a) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions or decisions concerning individuals in the care of the department and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data, all such conviction data collected by the department or its agent shall be maintained by the department or agent pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable.

(e) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(f) The department shall be authorized to conduct a name or descriptor based check of any person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who provides care or is in contact with persons under the care of the department without the consent of such person and without fingerprint comparison to the fullest extent permissible by federal and state law.

(g) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for

such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention. (Code 1981, § 37-1-28, enacted by Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 3/SB 244; Ga. L. 2018, p. 507, § 2-11/SB 336.)

The 2018 amendment, effective July 1, 2018, added subsection (g).

37-1-29. Crisis stabilization unit defined; certification of units; minimum standards and requirements; designation as an emergency receiving facility; legislative intent.

(a) As used in this Code section, the term "crisis stabilization unit" means a short-term residential program operated for the purpose of providing psychiatric stabilization and detoxification services that complies with applicable department standards and that provides brief, intensive crisis services 24 hours a day, seven days a week.

(b) The department shall be authorized to certify crisis stabilization units pursuant to this Code section for the purpose of providing psychiatric stabilization and detoxification services in a community based setting rather than inpatient hospitalization and other higher levels of care.

(c) The department shall establish minimum standards and requirements for the certification of crisis stabilization units in its policies and procedures. Following any changes to such policies and procedures pertaining to crisis stabilization units, notification of such changes shall be posted on the department's website within 45 days and shall remain posted on the website for at least six months. Such policies and procedures shall include, but not be limited to, the following:

(1) The capacity to carry out emergency receiving and evaluating functions;

(2) Voluntary and involuntary admission criteria;

(3) The prohibition to hold itself out as a hospital or bill for hospital or inpatient services;

(4) The unit is operated by an accredited and licensed, if applicable, health care authority;

(5) The unit has operating agreements with private and public inpatient hospitals and treatment facilities;

(6) The unit operates within the guidelines of the federal Emergency Medical Treatment and Active Labor Act with respect to stabilization and transfer of clients;

(7) Length of stay;

(8) Designation of transitional beds;

(9) Billing;

(10) Physician and registered professional nurse oversight;

(11) Staff to client ratios;

(12) Patient restraint or seclusion;

(13) Safety and emergency protocols;

(14) Pharmacy services;

(15) Medication administration; and

(16) Reporting requirements.

(d) A crisis stabilization unit shall be designated as an emergency receiving facility under Code Sections 37-3-40 and 37-7-40 and an evaluation facility under Code Sections 37-3-60 and 37-7-60, but shall not be designated as a treatment facility under Code Section 37-3-80 or 37-7-80. Crisis stabilization units may admit individuals on a voluntary basis. Individuals may be provided 24 hour observation, detoxification and stabilization services, medication prescribed by a physician, and other appropriate treatment or services.

(e) No entity shall operate as a crisis stabilization unit without having a valid certificate issued pursuant to this Code section.

(f) Application for a certificate to operate a crisis stabilization unit shall be submitted to the department in the manner prescribed by the department's policies and procedures.

(g) The department shall issue a certificate to an applicant who meets all the standards and requirements as set forth in the department's policies and procedures for the certification of crisis stabilization units. The certificate shall be nontransferable for a change of location or governing body.

(h) Each certified crisis stabilization unit shall permit authorized department representatives to enter upon and inspect any and all premises for which a certificate has been granted or applied for.

(i) The department may deny any application for certification which does not meet all the standards and requirements set forth in the department's policies and procedures for the certification of crisis stabilization units and may suspend or revoke a certification which has been issued if an applicant or a certified crisis stabilization unit violates

any such policies and procedures; provided, however, that before any order is entered denying a certification application or suspending or revoking a certification previously granted, the applicant or certificate holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(j) Any program certified as a crisis stabilization unit pursuant to this Code section shall be exempt from the requirements to obtain a certificate of need pursuant to Article 3 of Chapter 6 of Title 31.

(k) It is the intent of the General Assembly that this Code section provide a public benefit and comply with all safety net obligations in this title and that patients without private health care coverage receive priority consideration for crisis stabilization unit placement. (Code 1981, § 37-1-29, enacted by Ga. L. 2011, p. 346, § 1/HB 343; Ga. L. 2015, p. 1062, § 1/SB 131.)

The 2015 amendment, effective July 1, 2015, substituted "authorized to certify" for "authorized to license" in subsection (b); in the introductory paragraph of subsection (c), in the first sentence, substituted "the certification" for "the licensure", added "in its policies and procedures" at the end, added the second sentence, substituted "Such policies and procedures" for "Such standards and requirements" at the beginning of the third sentence; substituted "certificate" for "license" in subsections (e), (f), (h) and in two places in subsection (g); substituted "policies and procedures" for "rules and regulations" in subsection (f); in subsection (g), substituted "standards and requirements as set forth in the department's policies and procedures for the certification" for "rules and regulations for the licensure" in the first sentence; in subsection (h), substituted "certified crisis stabilization unit" for "licensee" near the beginning and deleted "so that verification of compliance with all relevant laws or regulations can be made" at the end; substituted the present provisions of subsection (i) for the former provisions, which read: "The department may deny any license application which does not meet all the rules and regulations for the licensure of crisis stabilization units and may suspend or revoke a license which has been issued if an applicant or a licensee violates any such rules and regulations; provided, however, that before any order is entered denying a license application or suspending or revoking a license previously granted, the applicant or license holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"; substituted "certified" for "licensed" in subsection (j); and deleted former subsection (l), which read: "The department shall promulgate rules and regulations in accordance with the General Assembly's intent as set out in subsection (k) of this Code section to implement the provisions of this Code section."

CHAPTER 2

ADMINISTRATION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, ADDICTIVE DISEASES, AND OTHER DISABILITY SERVICES

Article 1

General Provisions

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Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

ARTICLE 1

GENERAL PROVISIONS

37-2-2. Definitions.

As used in this chapter, the term:

(1) "Community service board" means a public mental health, developmental disabilities, and addictive diseases board established pursuant to Code Section 37-2-6.

(2) "Community service board area" means an area inclusive of the counties which fall within the boundaries of a community service board as designated by the department pursuant to subsection (b) of Code Section 37-2-3 for the establishment of a community service board.

(3) "Community service board service area" means a community service board area and any other county or portion thereof in which the community service board provides services.

(4) "Council" means the Behavioral Health Coordinating Council established pursuant to Code Section 37-2-4.

(5) "Governing board" means the governing board of a community service board established pursuant to subsection (b) of Code Section 37-2-6.

(6) "Health services" means any education or service provided by the department, the Department of Public Health, or the Department of Human Services, either directly or by contract.

(7) "Hospital" means a state owned or state operated facility providing services which include, but are not limited to, inpatient care and the diagnosis, care, and treatment or habilitation of the disabled. Such hospital may also provide or manage state owned or operated programs in the community. (Code 1933, § 88-602, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1995, p. 1302, § 17; Ga. L. 2002, p. 1324, §§ 1-7, 2-2; Ga. L. 2006, p. 310, § 3/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2014, p. 309, § 2/SB 349.)

The 2014 amendment, effective April 16, 2014, added paragraph (5) and redesignated former paragraphs (5) and (6) as present paragraphs (6) and (7), respectively.

37-2-3. Designation of boundaries for mental health, development disabilities, and addictive diseases regions; community service board areas.

(a) The board shall designate boundaries for mental health, developmental disabilities, and addictive diseases regions and may modify the boundaries of such regions from time to time as deemed necessary by the board.

(b) The department, with the approval of the commissioner, shall designate community service board areas, which shall serve as boundaries for the establishment of community service boards within this state for the purpose of delivering disability services. The department shall be authorized to initiate the redesignation of such community

service board area boundaries and may consider requests from a county or group of counties or a community service board or a group of community service boards for recommended changes to the boundaries of the community service board areas. The department, with the approval of the commissioner, is authorized to redesignate two or more community service board areas as a single community service board area. Two or more community service boards may request that the department, with the approval of the commissioner, merge the community service board areas served by such boards into a single community service board area. If the department, with the approval of the commissioner, authorizes the redesignation or merging of community services board areas pursuant to this paragraph, the assets, equipment, and resources of such community service boards shall become the assets, equipment, and resources of the reconstituted community service board serving the successor single board area. It is the intent of the General Assembly not to limit a community service board to serving only those counties within the boundaries of its community service board area.

(c) To the extent practicable, the boundaries for regional planning boards and offices and community service areas shall not subdivide any county unit. In dividing the state into areas, the board and the department shall take into consideration such factors as geographic boundaries, roads and other means of transportation, population concentrations, city and county lines, other relevant community services, and community economic and social relationships. Consideration shall also be given to the existence of facilities and personnel available in the areas for the delivery of disability services. (Code 1933, § 88-604, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2006, p. 310, § 4/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2014, p. 309, § 3/SB 349.)

The 2014 amendment, effective April 16, 2014, in subsection (b), substituted "community service board areas as a single community service board area." for "contiguous community service board areas as a single community service board area upon the request of the community service boards serving such areas; and, if so authorized" in the third sentence, added the fourth sentence, and added "If the department, with the approval of the commissioner, authorizes the redesignation or merging of community services board areas pursuant to this paragraph" at the beginning of the fifth sentence; and in subsection (c), deleted "or conflict with any districts established by the Department of Public Health and the state relating to the planning for, or delivery of, health services" at the end of the first sentence.

37-2-4. Behavioral Health Coordinating Council; membership; meetings; obligations.

(a) There is created the Behavioral Health Coordinating Council. The council shall consist of the commissioner of behavioral health and developmental disabilities; the commissioner of community health; the commissioner of public health; the commissioner of human services; the commissioner of juvenile justice; the commissioner of corrections; the commissioner of community supervision; the commissioner of community affairs; the Commissioner of Labor; the State School Superintendent; the chairperson of the State Board of Pardons and Paroles; two members, appointed by the Governor; the ombudsman appointed pursuant to Code Section 37-2-32; an adult consumer of public behavioral health services, appointed by the Governor; a family member of a consumer of public behavioral health services, appointed by the Governor; a parent of a child receiving public behavioral health services, appointed by the Governor; a member of the House of Representatives, appointed by the Speaker of the House of Representatives; and a member of the Senate, appointed by the Lieutenant Governor.

(b) The commissioner of behavioral health and developmental disabilities shall be the chairperson of the council. A vice chairperson and a secretary shall be selected by the members of the council as prescribed in the council's bylaws.

(c) Meetings of the council shall be held quarterly, or more frequently, on the call of the chairperson. Meetings of the council shall be held with no less than five days' public notice for regular meetings and with such notice as the bylaws may prescribe for special meetings. Each member shall be given written notice of all meetings. All meetings of the council shall be subject to the provisions of Chapter 14 of Title 50. Minutes or transcripts shall be kept of all meetings of the council and shall include a record of the votes of each member, specifying the yea or nay vote or absence of each member, on all questions and matters coming before the council. No member may abstain from a vote other than for reasons constituting disqualification to the satisfaction of a majority of a quorum of the council on a recorded vote. No member of the council shall be represented by a delegate or agent.

(d) Except as otherwise provided in this Code section, a majority of the members of the council then in office shall constitute a quorum for the transaction of business. No vacancy on the council shall impair the right of the quorum to exercise the powers and perform the duties of the council. The vote of a majority of the members of the council present at the time of the vote, if a quorum is present at such time, shall be the act of the council unless the vote of a greater number is required by law or by the bylaws of the council.

(e) The council shall:

(1) Develop solutions to the systemic barriers or problems to the delivery of behavioral health services by making recommendations that implement funding, policy changes, practice changes, and evaluation of specific goals designed to improve services delivery and outcome for individuals served by the various departments;

(2) Focus on specific goals designed to resolve issues for provision of behavioral health services that negatively impact individuals serviced by at least two departments;

(3) Monitor and evaluate the implementation of established goals; and

(4) Establish common outcome measures.

(f)(1) The council may consult with various entities, including state agencies, councils, and advisory committees and other advisory groups as deemed appropriate by the council.

(2) All state departments, agencies, boards, bureaus, commissions, and authorities are authorized and required to make available to the council access to records or data which are available in electronic format or, if electronic format is unavailable, in whatever format is available. The judicial and legislative branches are authorized to likewise provide such access to the council.

(g) The council shall be attached to the Department of Behavioral Health and Developmental Disabilities for administrative purposes only as provided by Code Section 50-4-3.

(h)(1) The council shall submit annual reports of its recommendations and evaluation of their implementation to the Governor and the General Assembly.

(2) The recommendations developed by the council shall be presented to the board of each member department for approval or review at least annually.

(i) For purposes of this Code section, the term "behavioral health services" has the same meaning as "disability services" as defined in Code Section 37-1-1. (Code 1933, § 88-611, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 6/SB 244; Ga. L. 2011, p. 705, § 5-21/HB 214; Ga. L. 2015, p. 422, § 5-58/HB 310; Ga. L. 2015, p. 617, § 1/HB 288.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, inserted "the commissioner of community supervision;" in the second sentence of subsection (a). See Editor's notes for applicability. The second 2015 amendment,

effective July 1, 2015, inserted "two members, appointed by the Governor;" in the second sentence of subsection (a).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015). For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

37-2-4.1. Local mental health, developmental disabilities, and addictive diseases offices; regional mental health, developmental disabilities, and addictive disease advisory councils.

(a) The department may create local mental health, developmental disabilities, and addictive diseases offices. The number of these offices may be modified from time to time as deemed necessary by the department.

(b) The department shall create a separate regional mental health, developmental disabilities, and addictive diseases advisory council for each region of the department as established under Code Section 37-2-3. Each regional advisory council may provide recommendations for the coordinated and comprehensive planning for its region in conformity with minimum standards and procedures established by the department.

(c) The powers, functions, obligations, and duties of the regional mental health, mental retardation, and substance abuse boards as they existed on June 30, 2002, are transferred to the department. The department shall succeed to all rights, privileges, entitlements, contracts, leases, agreements, and other transactions of the regional boards which were in effect on June 30, 2002, and none of those rights, privileges, entitlements, contracts, leases, agreements, and other transactions shall be impaired or diminished by reason of such transfer. In all such instances, the department shall be substituted for such regional board and the department shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions. (Code 1981, § 37-2-4.1, enacted by Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2015, p. 1361, § 2/HB 512.)

The 2015 amendment, effective July 1, 2015, substituted "department may create local" for "department shall create regional" in the first sentence of subsection (a); and substituted the present provisions of subsection (b) for the former provisions, which read: "The department shall create a separate regional mental health, developmental disabilities, and addictive diseases planning board for each regional office established under subsection (a) of this Code section. Each board shall provide and facilitate coordinated and comprehensive planning for its region in conformity with minimum standards and procedures established by the department. Each board shall be designated with such identifying words before the

term 'regional mental health, developmental disabilities, and addictive diseases planning board' as that regional planning board may, from time to time, choose and designate by official action."

37-2-5. Regional advisory councils — Establishing policy and direction for disability services; membership; bylaws; meetings; expenses.

(a) Each regional advisory council shall engage in disability services planning within its region and may perform other functions as may be provided or authorized by law, such as:

(1) Informing the department of local needs and priorities;

(2) Organizing natural supports;

(3) Recommending community improvements;

(4) Providing input to the department regarding the local perspective of consumers, families, and community stakeholders; and

(5) Encouraging prevention programs.

(b) Membership on the regional advisory council within an established region shall be determined as follows:

(1) Each county with a population of 50,000 or less according to the United States decennial census of 1990 or any future such census shall appoint one member to the council;

(2) Each county with a population of more than 50,000 according to the United States decennial census of 1990 or any future such census shall appoint one member for each population increment of 50,000 or any portion thereof;

(3) The appointment or appointments for each county shall be made by the county governing authority; and

(4) The county governing authority shall appoint a consumer of disability services, a family member of a consumer, an advocate for disability services, or a local leader or business person with an interest in mental health, developmental disabilities, and addictive diseases; provided, however, that for counties with more than one appointment, the county governing authority shall seek to ensure that such appointments represent various groups and disability services.

(b.1) A county governing authority may appoint the school superintendent, a member of the county board of health, a member of the local board of education, or any other elected or appointed official to serve on the regional advisory council, provided that such person meets the qualifications of paragraph (4) of subsection (b) of this Code section,

such person does not serve on a community service board, and such appointment does not violate the provisions of Chapter 10 of Title 45.

(b.2)(1) A person shall not be eligible to be appointed to or serve on a regional advisory council if such person is:

(A) A member of the community service board which serves that region;

(B) An employee or board member of a private or public entity which contracts with the department, the Department of Human Services, or the Department of Public Health to provide health, mental health, developmental disabilities, or addictive diseases services within the region;

(C) An employee of such local office or employee or board member of any private or public group, organization, or service provider which contracts with or receives funds from such local office; or

(D) An employee or board member of the department, the Department of Human Services, or the Department of Public Health.

(2) A person shall not be eligible to be appointed to or serve on a regional advisory council if such person's spouse, parent, child, or sibling is a member of that regional advisory council or a member, employee, or board member specified in paragraph (1) of this subsection. No person who has served a full term or more on a regional advisory council or regional planning board may be appointed to a community service board until a period of at least two years has passed since the time such person served on the regional advisory council or the regional planning board. No person who has served on a regional planning board and who becomes a member of a regional advisory council after June 30, 2015, may be appointed to a community service board until a period of at least two years has passed since the time such person has served on the regional planning board or regional advisory council.

(c) In making appointments to the regional advisory council, the various county governing authorities shall consider the cultural and social characteristics, including gender, race, ethnic, and age characteristics, of the regional and county populations. The county governing authorities are further encouraged to ensure that each disability group is viably represented on the regional advisory council, and in so doing the county governing authority may consider suggestions for appointments from clinical professional associations as well as advocacy groups, including but not limited to the Georgia Mental Health Consumer Network, People First of Georgia, the Georgia Parent Support

Network, National Alliance for the Mentally Ill Georgia, the American Association for Retired Persons, Georgians for Children, Mental Health America of Georgia, Georgia ARC Network, and the Georgia Council on Substance Abuse and their local chapters and affiliates.

(d) The initial term of a new member of a regional advisory council shall be determined by the commissioner in order to establish staggered terms on the council. At such time as the terms of the members of the council are equally staggered, the term of a member of the regional advisory council shall be for a period of three years and until the member's successor is appointed and qualified. A member may serve no more than two consecutive terms. The term of a regional advisory council member shall terminate upon resignation, death, or inability to serve due to medical infirmity or other incapacity or such other reasonable condition as the regional advisory council may impose under its bylaws. Vacancies on the regional advisory council shall be filled in the same manner as the original appointment.

(e) Prior to August 1, 2015, each regional advisory council shall adopt bylaws governing its operation and management. At a minimum, the bylaws shall provide for staggered terms of the council, requirements for an annual meeting to elect officers, a mechanism for ensuring that consumers of disability services and family members of consumers constitute a majority of the appointments to the council, and a mechanism for ensuring that each disability service is equitably represented by appointments to the council. Any council member who serves an initial term of less than three years may be eligible to be reappointed for two full consecutive three-year terms. The chairperson and vice chairperson of the regional advisory council shall be elected from among the members of the council to serve a term of one year with the option of reelection for an additional one-year term. The bylaws shall provide for any other officers and their means of selection, as well as any necessary committees or subcommittees of the council. Prior to their adoption by the regional advisory council, the bylaws shall be submitted to the department for review and approval. The regional advisory council must have the written approval of the commissioner prior to the adoption of bylaws.

(f) The regional advisory council shall meet not less than once every four months, beginning on July 1 and continuing through the next June 30, which time frame shall be the fiscal year for each regional advisory council.

(g) Each member of the regional advisory council may, upon approval of the department, receive reimbursement for actual expenses incurred in carrying out the duties of such office in conformance with rates and allowances set for state employees by the Office of Planning and Budget and the same mileage allowance for use of a personal car as that

received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier.

(h) Each regional advisory council which is composed of members who are appointed thereto by the governing authority of only one county shall have a minimum of six members, notwithstanding the provisions of subsection (b) of this Code section, which members shall in all other respects be appointed as provided in this Code section. (Code 1933, §§ 88-605, 88-606, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 2; Ga. L. 2000, p. 440, § 2; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2015, p. 1361, § 3/HB 512.)

The 2015 amendment, effective July 1, 2015, substituted "regional advisory council" for "regional planning board" and substituted "council" for "board" throughout; substituted the present provisions of subsection (a) for the former provisions, which read: "Each regional planning board shall engage in disability services planning including job supports and housing within its region and shall perform such other functions as may be provided or authorized by law."; deleted "or" at the end of subparagraph (b.2)(1)(A); in subparagraph (b.2)(1)(C), substituted "local office" for "regional office" in two places; in paragraph (b.2)(2), substituted "regional advisory council" for "regional board" in the second sentence, in the third sentence, inserted "planning" preceding "board" near the beginning, substituted "after June 30, 2015" for "on June 30, 2002" in the middle, and added "or regional advisory council" at the end; substituted "shall consider" for "shall ensure that appointments are reflective of" in the first sentence of subsection (c); deleted former paragraph (d)(1), which read: "In addition, members of the regional mental health, mental retardation, and substance abuse boards in office on June 30, 2002, shall become members of the regional planning board for the area in which they reside on July 1, 2002, and shall serve out the balance of their terms."; redesignated former paragraph (d)(2) as present subsection (d); substituted "2015" for "2002" in the first sentence of subsection (e); substituted "four months" for "two months" in subsection (f); and substituted "the department" for "the regional coordinator" in subsection (g).

37-2-5.1. Allocation of funds.

(a) State, federal, and other funds appropriated to the department and available for the purpose of funding the planning and delivery of disability services shall be distributed in accordance with this subsection. All funds associated with services to clients residing within a given region shall be managed through the department; the term "all funds" shall include funding for hospitals, community service boards, private and public contracts, and any contracts relating to service delivery for clients within the given region. The department shall establish a funding amount for regions conditioned upon the amount of funds appropriated. The funding amount shall be determined, in part, based on consumer service needs, service and program history, population based funding needs, infrastructure mandates, program efficiency and

effectiveness, geographic distances, and other factors affecting the cost and level of service needs within each region.

(b) The department shall establish guidelines to ensure that regions receive such funding based on client population, past and future service delivery needs and capabilities, and in consideration of special needs populations, such as homeless and transient populations. The department shall ensure that funds are managed based primarily on services to clients and in compliance with all federal, state, and regulatory requirements.

(c) The department, in compliance with the provisions of the General Appropriations Act and other applicable laws, is authorized to move funds to and between community and institutional programs based on need, and the department shall develop appropriate allocation and accounting mechanisms to move funds in a planned and rational manner between hospitals, community service boards, and other providers based on client needs and utilization. (Code 1981, § 37-2-5.1, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 3; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2015, p. 1361, § 4/HB 512.)

The 2015 amendment, effective July 1, 2015, deleted former subsection (a), which read: "Each region shall be served by a regional coordinator who shall be duly qualified and appointed by the commissioner. The regional coordinator shall serve as the supervisor of the regional office, which shall be a unit of the department. The regional coordinator shall serve at the pleasure of the commissioner. The commissioner shall be authorized to appoint an interim regional coordinator at any time that the position of regional coordinator is vacant and prior to the appointment of a duly qualified and approved successor."; deleted former subsection (b), which read: "The regional coordinator may appoint such other staff including a regional services administrator and personnel to work for the regional office as the department deems necessary and appropriate. The regional coordinator and such staff and personnel shall be employees of the department. Expenses for the regional office and planning board, the employment of the regional coordinator, other staff and personnel, and the operation of the regional office shall be funded by the department as funds are appropriated by the General Assembly. The department shall impose limits on the administrative and operating expenditures of the regional office and planning board."; and redesignated former subsection (c) as present subsections (a) through (c).

37-2-5.2. Local offices — Duties, functions, and powers.

Under the supervision of the department, each local office shall have the following duties and functions:

(1) To receive and administer gifts, moneys, and donations for purposes pertaining to mental health, developmental disability, and addictive disease services;

(2) To encourage the development, in cooperation with the department, of private and public providers of programs and disability

services which respond to the needs of consumers and families of consumers within the region;

(3) To serve as the representative of the citizens of the area in regard to disability services;

(4) To receive and consider complaints and grievances submitted by individuals, associations, or agencies involved with the delivery or receipt of disability services and, if deemed appropriate, to seek resolution in coordination with the department, through processes which may include impartial mediation and alternative dispute resolution, of such complaints and grievances with the appropriate hospital, community service board, or other private or public provider of service;

(5) To assure the highest achievable level of public awareness and understanding of both available and needed disability services;

(6) To visit regularly disability services facilities and programs which serve the region in order to assure contracted providers are licensed and accredited by the designated agencies prescribed by the department, and in order to evaluate the effectiveness and appropriateness of the services, as such services relate to the health, safety, and welfare of service recipients, and to provide technical assistance to programs in delivering services; and

(7) To participate with other local offices and planning boards, the department, local, state, or federal government agencies, educational institutions, and public and private organizations in the coordination of planning, research, service development, and evaluation activities:

(A) To work cooperatively with all units of county and local government, including the county boards of health, within the region; and

(B) To establish goals and objectives, not inconsistent with those established by the department, for its region. (Code 1981, § 37-2-5.2, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 7/SB 244; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2015, p. 1361, § 5/HB 512.)

The 2015 amendment, effective July 1, 2015, deleted the subsection (a) designation; substituted "local office" for "regional office" in the introductory paragraph; deleted former paragraph (a)(1), which read: "To prepare, in consultation with consumers and families, community programs, hospitals, other public and private providers, its regional planning board, and appropriate advisory and advocacy groups, an annual plan identifying the needs and priorities for disability services in the region. The plan shall be submitted to the department at a time and in the manner specified by the department so as to ensure that the plan informs the annual appropriations request; deleted former paragraph (a)(2), which read:

"To provide, as funds become available, for consumer assessment and service authorization and coordination for each consumer receiving services within the region;"; deleted former paragraph (a)(3), which read: "To exercise responsibility and authority as specified in this chapter within the region in all matters relating to the funding and delivery of disability services;"; redesignated former paragraph (a)(4) as present paragraph (1), and, in paragraph (1), deleted "grants," preceding "gifts"; deleted paragraph (a)(5), which read: "To enter into contracts on behalf of the department with any hospital, community service board, or other public or private providers without regard to regional or state boundaries for the provision of disability services, and to enter into all contracts on behalf of the department necessary or incidental to the performance of duties and functions of the department and regional office;"; redesignated former paragraphs (a)(6) through (a)(11) as present paragraphs (2) through (7); inserted "in coordination with the department" near the middle of paragraph (4); substituted "local offices" for "regional offices" near the beginning of the introductory paragraph (7); added "and" at the end of subparagraph (7)(A); substituted a period for "; and" at the end of subparagraph (7)(B); deleted former subparagraph (a)(11)(C), which read: "To participate in the establishment and operation of a data base and network, coordinated by the department, to serve as a comprehensive management information system for disability services and programs."; deleted former subsection (b), which read: "It is the express intent of this chapter to confer upon the regional offices as the administrative entities of the department the flexibility, responsibility, and authority necessary to enter into contracts on behalf of the department with a wide range of public and private providers to ensure that consumers are afforded cost-effective, locally based, and quality disability services. Under the supervision of the department, regional offices are specifically authorized to enter into contracts on behalf of the department directly with any county governing authority, any disability services organization created or designated by such county governing authority, any county board of health, any private or public provider, or any hospital for the provision of disability services."; and deleted former subsection (c), which read: "Each regional office shall account for all funds received, expended, and administered and shall make reports to the department regarding the funds received from the department. The audit of such activity shall be part of the annual audit of the department."

37-2-6. Community mental health, developmental disabilities, and addictive diseases service boards — Community service board creation; membership; participation of counties; transfer of powers and duties; alternate method of establishment; bylaws; reprisals prohibited.

(a) Community service boards in existence on June 30, 2014, are re-created effective July 1, 2014, to provide mental health, developmental disabilities, and addictive diseases services. Such community service boards may enroll and contract with the department, the Department of Human Services, the Department of Public Health, or the Department of Community Health to become a provider of mental health, developmental disabilities, and addictive diseases services or health, recovery, housing, or other supportive services. Such boards shall be considered public agencies. Each community service board shall be a public corporation and an instrumentality of the state; provided, however, that the liabilities, debts, and obligations of a community service board shall not constitute liabilities, debts, or

obligations of the state or any county or municipal corporation and neither the state nor any county or municipal corporation shall be liable for any liability, debt, or obligation of a community service board. Each community service board re-created pursuant to this Code section is created for nonprofit and public purposes to exercise essential governmental functions. The re-creation of community service boards pursuant to this Code section shall not alter the provisions of Code Section 37-2-6.2 which shall apply to those re-created community service boards and their employees covered by that Code section and those employees' rights are retained.

(b) The governing board of each community service board shall consist of members appointed by the governing authorities of the counties within the community service board area. Membership on such governing board shall be determined as follows:

(1)(A) The governing authority of each county within the community service board area:

(i) With a population of 50,000 or less according to the most recent United States decennial census shall appoint one member to such governing board; and

(ii) With a population of more than 50,000 according to the most recent United States decennial census shall appoint one member for each population increment of 50,000 or any portion thereof; or

(B) In the event that the number of governing board member positions established in accordance with subparagraph (A) of this paragraph would exceed nine, the membership of such governing board pursuant to this subsection shall be appointed as follows and the bylaws shall be amended accordingly:

(i) For community service boards whose community service board area contains nine or fewer counties, the membership of the board shall be set at nine members and appointments to the board shall be made by the governing authority of each county within the community service board area in descending order from the county with the largest population to the county with the smallest population according to the most recent United States decennial census and this method shall be repeated until all nine members of the governing board of the community service board are appointed. If a county governing authority fails to make an appointment within a reasonable time, the next descending county by population shall make an appointment and the method shall continue; and

(ii) For community service boards whose community service board area contains more than nine counties, one member of the

governing board of the community service board shall be appointed by the governing authority of each county within the community service board area, so that the number of members on the governing board is equal to the number of counties in the community service board area.

The county governing authority shall appoint as at least one of its appointments a consumer of disability services; a psychiatrist, a psychologist, or other behavioral health or development disabilities professional; a law enforcement officer; a family member of a consumer; an advocate for disability services; a parent of a child with mental illness or addictive disease; or a local leader or businessperson with an interest in mental health, developmental disabilities, and addictive diseases; provided, however, that for counties with more than one appointment, the county governing authority shall seek to ensure that such appointments represent various groups and disability services;

(2) In addition to the members appointed pursuant to paragraph (1) of this subsection, the governing board of each community service board may appoint one additional member in order to address variation in the population sizes of counties or the financial contributions of counties within the community service board area. The bylaws of the community service board shall address the establishment of the additional governing board membership position, if established, and the purpose or purposes for which such position is created. The term of office of such additional member shall be the same as that of other members of the governing board of the community service board as provided in subsection (h) of this Code section;

(3) In addition to the members appointed pursuant to paragraphs (1) and (2) of this subsection, each governing board of a community service board shall have additional members who shall serve on such governing board while concurrently holding elective or appointive office and who shall be appointed by a county governing authority as follows:

(A) The number of elected or appointed officials serving on the governing board of a community service board shall be equal to one-third, defined herein as 33 percent or 0.33, of the number of the members of such board appointed in accordance with paragraph (1) of this subsection. In the event the calculation of such percentage yields a whole number and a fraction of a whole number, then the number of members to be appointed shall be equal to the nearest whole number; however, a fraction equal to 50 percent or greater shall be rounded to the next highest whole number;

(B) The governing authority of each county in the community service board area making the largest cash or in-kind financial

contribution in descending order to the community service board in the county fiscal year immediately prior to the time of such appointment shall make one appointment of an elected or appointed official to the community service board until the number of such appointments required by this paragraph is reached. For community service boards whose community service board areas contains fewer counties than the number of appointments made pursuant to this paragraph, the membership appointments of elected or appointed officials to the governing board shall be made in the descending order prescribed in this paragraph and this method shall be repeated until all members who hold elective or appointive office are appointed to the governing board of the community service board. In the event that the number of such county governing authorities making a cash or in-kind financial contribution to the community service board does not result in the number of appointments required by this paragraph, the remaining appointment or appointments shall be made by the governing authority or authorities of the county or counties in the community service board area with the largest population in descending order according to the most recent United States decennial census until the number of appointments required by this paragraph is reached. For community service boards whose community service board area contains three or fewer counties, the membership appointments of elected or appointed officials to the governing board shall be made in the descending order prescribed in this paragraph and this method shall be repeated until all members who hold elective or appointive office are appointed to the governing board of the community service board. In the event there is no county in the community service board area where the governing authority made a cash or in-kind financial contribution to the community service board in the county fiscal year immediately prior to the time of such appointment, the appointments required by this paragraph shall be made by the governing authority or authorities of the county or counties in the community service board area with the largest population in descending order according to the most recent United States decennial census until the number of appointments required by this paragraph is reached;

(C) As used in this paragraph, the term "elective or appointive office" or "elected or appointed official" means:

(i) The elected chief executive officer, by whatever name called, of the county governing authority making the appointment to the governing board of the community service board;

(ii) An elected member of such county governing authority;

(iii) The county manager of such county governing authority where such position exists as defined in Code Section 36-5-22;

(iv) The sheriff of such county;

(v) The elected chief executive officer, by whatever named called, an elected member of the governing authority, or an appointed city manager of any municipality lying wholly or partially within such county;

(vi) A member of the board of education of such county or a member of the governing board of any municipal school system lying wholly or partially within such county;

(vii) The school superintendent of such county or the superintendent of any municipal school system lying wholly or partially within such county;

(viii) The appointed public safety commissioner, police chief, or fire chief of such county or any municipality lying wholly or partially within such county; or

(ix) Any other elected official from within such county;

(D) No member of the governing board of the community service board appointed pursuant to this paragraph shall continue to serve on the governing board if such member no longer holds the elective or appointive office which made him or her eligible for appointment to such board. The term of office of an elected official appointed to serve as a member of the governing board of a community service board shall be the same as such official's elective term of office. The term of office of an appointed official appointed to serve as a member of such governing board shall be the same as that of other members of such governing board; and

(E) As used in this paragraph, the term "in-kind financial contribution" means the most current dollar value of any physical facilities or buildings and equipment, including vehicles, of all kinds provided at no cost by the county governing authority for use by the community service board.

(4) Each community service board in existence on June 30, 2014, shall reconstitute the membership of its governing board in accordance with the provisions of paragraphs (2) and (3) of this subsection, effective July 1, 2014.

A community service board which increases or reduces the number of its members of its governing board in accordance with paragraphs (2) and (3) of this subsection shall revise its bylaws adopted in accordance with subsection (h) of this Code section to reflect such increases or reductions. A community service board which reduces the number of members of its governing board shall designate which position or positions are to be eliminated and shall make reasonable efforts to

eliminate any position or positions of governing board members whose terms expire on or before June 30, 2014; provided, however, that members serving on the governing board of a community service board whose terms do not expire on or before June 30, 2014, shall continue to serve out the terms of office to which they were appointed, regardless of whether this causes a governing board to temporarily exceed the maximum number of members. Any additional positions created in conformity with such paragraphs (2) and (3) may be filled on July 1, 2014, and the governing authority of a county that is otherwise authorized to appoint such additional member or members to the governing board of a community service board may do so no sooner than May 1, 2014, but any person so appointed shall not take office until July 1, 2014. If a position on such governing board of the community service board is not filled on July 1, 2014, a vacancy in that position shall be deemed to have occurred on that date. A governing board of the community service board is authorized to make whatever changes necessary in the terms of office of its members in order to achieve the staggering of terms required by subsection (h) of this Code section;

(5)(A) A person shall not be eligible to be appointed to or serve on a governing board of a community service board if such person is:

(i) A member of the regional planning board which serves the region in which that community service board is located;

(ii) An employee or board member of a public or private entity which contracts with the department to provide mental health, developmental disabilities, and addictive diseases services within the community service board area served by that community service board;

(iii) An employee of that community service board or employee or board member of any private or public group, organization, or service provider which contracts with or receives funds from that community service board; or

(iv) A former employee of that community service board until a period of at least two years has passed since the time such person was employed by that community service board.

(B) A person shall not be eligible to be appointed to or serve on a governing board of a community service board if such person's spouse, parent, child, or sibling is a member of that governing board or a member, employee, or board member specified in this paragraph. With respect to appointments by the same county governing authority, no person who has served a full term or more on a governing board of a community service board may be appointed to a regional planning board until a period of at least two

years has passed since the time such person served on the governing board of a community service board, and no person who has served a full term or more on a regional planning board may be appointed to the governing board of a community service board until a period of at least two years has passed since the time such person has served on the regional planning board; and

(6) A governing board of a community service board created in accordance with this subsection shall reconstitute its governing board membership in conformity with the most recent United States decennial census in accordance with subparagraph (d)(2)(C) of Code Section 1-3-1.

(b.1) A county governing authority may appoint a member of the county board of health to serve on the governing board of the community service board provided that such person meets the qualifications of paragraph (1) or (2) of subsection (b) of this Code section and such appointment does not violate the provisions of Chapter 10 of Title 45. For terms of office which begin July 1, 1994, or later, an employee of the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) or an employee of a county board of health shall not serve on a governing board of a community service board. For terms of office which begin July 1, 2009, or later, an employee of the department, the Department of Human Services, the Department of Public Health, or the Department of Community Health or a board member of the respective boards of each department shall not serve on a governing board of a community service board.

(c) In making appointments to the governing board of a community service board, the county governing authorities shall ensure that such appointments are reflective of the cultural and social characteristics, including gender, race, ethnic, and age characteristics, of the community service board area and county populations. The county governing authorities are further encouraged to ensure that each disability group is represented on the governing board of the community service board, and in making such appointments the county governing authorities may consider suggestions from clinical professional associations as well as advocacy groups. For the purposes of this subsection, the term "advocacy groups" means any organizations or associations that advocate for, promote, or have an interest in disability services and are exempted as a charitable organization from federal income tax pursuant to Section 501(c) of the Internal Revenue Code; provided, however, that "advocacy groups" shall not mean paid providers of disability services or health services.

(c.1) A county governing authority in making appointments to the governing board of a community service board shall take into consid-

eration that at least one member of the governing board of a community service board is an individual who is trained or certified in finance or accounting; provided, however, that if after a reasonable effort at recruitment there is no person trained or certified in finance or accounting within the community service board area who is willing and able to serve, the county governing authority may consider for appointment any other person having a familiarity with financial or accounting practices.

(d) Each county in which the governing authority of the county is authorized to appoint members to the governing board of the community service board shall participate with the board in the operation of the program through the community service board. All contractual obligations, including but not limited to real estate leases, rentals, and other property agreements, other duties, rights, and benefits of the mental health, developmental disabilities, and addictive diseases service areas in existence on June 30, 2014, shall continue to exist along with the new powers granted to the community service boards effective July 1, 2014.

(e) Notwithstanding any other provision of this chapter, a community service board may be constituted in a method other than that outlined in subsection (b) of this Code section if:

(1) A board of health of a county desiring to be the lead county board of health for that county submits a written agreement to the former Division of Mental Health, Developmental Disabilities, and Addictive Diseases (now known as the Department of Behavioral Health and Developmental Disabilities) of the former Department of Human Resources before July 1, 1993, to serve as the community service board and to continue providing disability services in that county after July 1, 1994, and the governing authority for that county adopted a resolution stating its desire to continue the provision of disability services through its board of health after July 1, 1994, and submitted a copy of such resolution to the former division before July 1, 1993; or

(2)(A) The lead county board of health for a community mental health, mental retardation, and substance abuse service area, as designated by the former Division of Mental Health, Developmental Disabilities, and Addictive Diseases (now known as the Department of Behavioral Health and Developmental Disabilities) of the former Department of Human Resources on July 15, 1993, but which area excludes any county which meets the requirements of paragraph (1) of this subsection, submitted a written agreement to the former division and to all counties within such service area to serve as the community service board for that area and to continue providing disability services after July 1, 1994, which agreement was submitted between July 31, 1993, and December 31, 1993; and

(B) Each county governing authority which is within the service area of a lead county board of health which has submitted an agreement pursuant to subparagraph (A) of this paragraph adopted a resolution stating its desire to continue the provision of disability services through such lead county board of health after July 1, 1994, and submitted a copy of that resolution to the former division, the regional board, and the lead county board of health between July 31, 1993, and December 31, 1993; and

(3) The lead county board of health qualifying as such under paragraph (1) or (2) of this subsection agrees in writing to appoint a director for mental health, mental retardation, and substance abuse other than the director of the county board of health as stipulated in Code Section 31-3-12.1, to appoint an advisory council on mental health, mental retardation, and substance abuse consisting of consumers, families of consumers, and representatives from each of the counties within the boundaries of the community service board, and to comply with all other provisions relating to the delivery of disability services pursuant to this chapter.

(f) If the conditions enumerated in subsection (e) of this Code section are not met prior to or on December 31, 1993, a community service board as provided in subsection (b) shall be established and appointed by January 31, 1994, to govern the provision of disability services within the boundaries of the community service board. Such community service board shall have the authority to adopt bylaws and undertake organizational and contractual activities after January 31, 1994; provided, however, that the community service board established pursuant to this Code section may not begin providing services to clients until July 1, 1994.

(g) If a community service board is established pursuant to paragraph (2) of subsection (e) of this Code section, such community service board must operate as established at least until June 30, 1996; provided, however, that in each fiscal year following June 30, 1996, the counties included under the jurisdiction of such a community service board may vote to reconstitute the community service board pursuant to the provisions of subsection (b) of this Code section by passage of a resolution by a majority of the county governing authorities within the jurisdiction of the community service board prior to January 1, 1997, or each year thereafter.

(h) The governing board of each community service board shall adopt bylaws and operational policies and guidelines in conformity with the provisions of this chapter. Those bylaws shall address governing board appointment procedures, initial terms of governing board members, the staggering of terms, quorum, a mechanism for ensuring that consumers of disability services and family members of consumers constitute no

less than 50 percent of the governing board members appointed pursuant to paragraphs (1) and (2) of subsection (b) of this Code section, and a mechanism for ensuring equitable representation of the various disability groups. A quorum for the transaction of any business and for the exercise of any power or function of the governing board of the community service board shall consist of a majority of the total number of filled governing board member positions appointed pursuant to subsection (b) of this Code section. A vote of the majority of such quorum shall be the act of the governing board of the community service board except where the bylaws of the community service board may require a greater vote. The regular term of office for each member of the governing board of a community service board shall be three years. Vacancies on such governing board shall be filled in the same manner as the original appointment. For purposes of this subsection, "equitable representation of the various disability groups" means that consumers and family members of such consumers who constitute no less than 50 percent of the governing board members holding membership pursuant to paragraphs (1) and (2) of subsection (b) of this Code section shall be appointed so as to assure that an equal number of such members to the fullest extent possible represents mental health, developmental disabilities, and addictive diseases interests.

(i) The governing board of each community service board which is composed of members who are appointed thereto by the governing authority of only one county shall have a minimum of seven and no more than nine members, not including any additional members appointed pursuant to paragraphs (2) and (3) of subsection (b) of this Code section, notwithstanding the provisions of subsection (b) of this Code section, which members in all other respects shall be appointed as provided in this Code section.

(j) No governing board member, officer, or employee of a community service board who has authority to take, direct others to take, recommend, or approve any personnel action shall take or threaten action against any employee of a community service board as a reprisal for making a complaint or disclosing information concerning the possible existence of any activity constituting fraud, waste, or abuse in or relating to the programs, operations, or client services of the community service board, to the governing board of the community service board, to a member of the General Assembly, or to the department unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity. Any action taken in violation of this subsection shall give the public employee a right to have such action set aside in a proceeding instituted in the superior court.

(k) A member of a governing board of a community service board who after notice that such member has failed to complete any required

training prescribed by the department pursuant to paragraph (6) of Code Section 37-1-20 continues such failure for 30 days may be removed from office by the remaining members of the governing board of the community service board.

(l) A member of a governing board of a community service board may resign from office by giving written notice to the executive director of the community service board. The resignation is irrevocable after delivery to such executive director but shall become effective upon the date on which the notice is received or on the effective date given by the member in the notice, whichever date is later. The executive director, upon receipt of the resignation, shall give notice of the resignation to the remaining members of the governing board of the community service board and to the chief executive officer or governing authority of the county that appointed the member.

(m) The office of a member of a governing board of a community service board shall be vacated upon such member's resignation, death, or inability to serve due to medical infirmity or other incapacity, removal by the community service board as authorized in this Code section, or upon such other reasonable condition as the community service board may impose under its bylaws.

(n) Each member of the governing board of a community service board shall comply with the code of ethics for members of boards, commissions, and authorities as set forth in Code Section 45-10-3. A governing board member who fails to comply with such code may be subject to removal from office by the remaining members of the governing board of the community service board or by the commissioner as authorized in Code Section 37-2-10. The governing board of the community service board shall revise the bylaws of the community service board adopted in accordance with subsection (h) of this Code section to reflect the requirements of this subsection.

(o) A member of the governing board of a community service board shall have a fiduciary responsibility to avoid any conflict of interest in a manner that is consistent with the declarations found in Code Section 45-10-2. When such governing board is to decide an issue about which a member has an unavoidable conflict of interest, such member shall absent herself or himself from not only the vote, but also from any deliberation on such issue. Members of the governing board of a community service board shall not use their positions to obtain employment with or contracts from the community service board, its funding sources, or its suppliers of goods and services for themselves, family members, or close associates. Should such member desire such employment, such member shall first resign. No person who has served as a member of the governing board of a community service board may be employed by that community service board, either directly or by

contract, until a period of at least two years has passed since the time such person served as a member of the governing board of that community service board. A governing board member or a member of the governing board member's family may obtain disability or health services from the community service board in the ordinary course of the community service board's provision of such disability or health services on the same terms and under the same conditions applicable to any member of the public. An individual governing board member shall not exercise individual authority over the community service board's operations, affairs, property, or personnel, except when such member's action is explicitly permitted by action of the governing board of the community service board by policy or by resolution. The governing board of the community service board shall revise the bylaws of the community service board adopted in accordance with subsection (h) of this Code section to reflect the requirements of this subsection.

(p) A member of a governing board of a community service board may not enter upon the duties of office until such member takes the following oath of office:

STATE OF GEORGIA

COUNTY OF _____

I, _____, do solemnly swear or affirm that I will truly perform the duties of a member of the governing board of the _____ Community Service Board to the best of my ability.

I do further swear or affirm:

(1) That I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;

(2) That I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I am by the laws of the State of Georgia prohibited from holding;

(3) That I am otherwise qualified to hold said office according to the Constitution and the laws of Georgia; and

(4) That I will support the Constitution of the United States and this state.

_____

Signature of member of

the governing board of the

_____ Community Service Board

_____

Typed name of member of

the governing board of the

_____ Community Service Board

Sworn and subscribed

before me this _____ day

of _____, _____.

(SEAL)

(Code 1933, § 88-607, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 4; Ga. L. 1999, p. 860, § 1; Ga. L. 2002, p. 1324, §§ 1-7, 2-3; Ga. L. 2006, p. 310, § 5/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2011, p. 705, § 5-22/HB 214; Ga. L. 2014, p. 309, § 4/SB 349; Ga. L. 2016, p. 864, § 37/HB 737.)

The 2014 amendment, effective April 16, 2014, rewrote this Code section.

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, in the last sentence of subsection (h), substituted "For purposes" for "For the purposes" and substituted "means" for "shall mean".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, the second division (b)(3)(C)(vii), as added by Ga. L. 2014, p. 309, § 4/SB 349, was redesignated as division (b)(3)(C)(viii).

37-2-6.1. Community service boards — Executive director, staff, budget, facilities; powers and duties; exemption from state and local taxation.

(a)(1) The governing board of each community service board shall employ an executive director to serve as its chief executive officer and shall prescribe the duties thereof. The selection of the executive director and all terms of compensation shall be set by the governing board of each community service board and shall be subject to review and approval by the commissioner prior to any offer of employment or at any point thereafter where the terms of compensation are proposed to be substantially altered. Such contracts shall be reviewed by the commissioner every five years. Further, the commissioner shall be required to review and approve the selection of the executive director of each community service board for adherence to minimum qualifi-

cations for the position as prescribed by the department. The executive director shall direct the day-to-day operations of the community service board. Such executive director shall be appointed and removed by the community service board pursuant to this subsection and shall appoint other necessary staff pursuant to an annual budget adopted by the board, which budget shall provide for securing appropriate facilities, sites, and professionals necessary for the provision of disability and health services. Notwithstanding any other provision of law to the contrary, the governing board of the community service board may delegate any power, authority, duty, or function to its executive director or other staff. The executive director or other staff is authorized to exercise any power, authority, duty, or function on behalf of the governing board of the community service board.

(2) The executive director or any full-time or part-time employee of a community service board shall have a responsibility to avoid any conflict of interest in a manner that is consistent with the declarations found in Code Section 45-10-21. Such employees shall not transact any business with that community service board as prohibited in Code Section 45-10-23 unless any such transaction falls under the exceptions granted in Code Section 45-10-25. Transactions that fall under such exceptions shall be disclosed to the governing board of the community service board in the manner as such governing board shall determine and yearly to the Georgia Government Transparency and Campaign Finance Commission as prescribed in Code Section 45-10-26. The governing board of the community service board shall promulgate policies and procedures governing executive director and employee conflicts of interest and establish a code of ethics for the executive director and employees of the community service board.

(b) The governing board of each community service board or each community service board, under the jurisdiction of its governing board, shall perform duties, responsibilities, and functions and may exercise power and authority described in this subsection as follows:

(1) The governing board of each community service board shall adopt bylaws for the conduct of its affairs and the affairs of their respective community service boards; provided, however, that the governing board of a community service board shall meet at least quarterly, and that all such meetings and any bylaws shall be open to the public, as otherwise required under Georgia law;

(2) The governing board of each community service board shall be required to review and approve the annual budget of the community service board and shall be required to establish the general policies related to such budget to be followed by the community service board;

(3) Each community service board shall provide an adequate range of disability services as prescribed by the department;

(4) Each community service board may make and enter into all contracts necessary and incidental to the performance of its duties and functions;

(5) Each community service board may acquire by purchase, gift, lease, or otherwise and may own, hold, improve, use, and sell, convey, exchange, transfer, lease, sublease, and dispose of real and personal property of every kind and character, or any interest therein, for its corporate purposes;

(6) Each community service board may contract to utilize the services of the Department of Administrative Services, the state auditor, or any other agency of state, local, or federal government;

(7) Each community service board may provide, either independently or through contract with appropriate state or local governmental entities, the following benefits to its employees, their dependents, and survivors, in addition to any compensation or other benefits provided to such persons:

(A) Retirement, pension, disability, medical, and hospitalization benefits, through the purchase of insurance or otherwise, but medical and hospitalization benefits may only be provided through the Department of Community Health under the same conditions as provided for such benefits to state employees, and the Department of Community Health shall so provide if requested;

(B) Life insurance coverage and coverage under federal old age and survivors' insurance programs;

(C) Sick leave, annual leave, and holiday leave; and

(D) Any other similar benefits including, but not limited to, death benefits;

(8) Each community service board may cooperate with all units of local government in the counties where the community service board provides services as well as neighboring regions and with the programs of other departments, agencies, and regional commissions and regional planning boards;

(9) Each community service board shall establish and maintain a personnel program for its employees and fix the compensation and terms of compensation of its employees; provided, however, that each community service board shall comply with the provisions of Chapter 20 of Title 45, for so long as and to the extent that each employee of such board remains subject to the rules and regulations of the State Personnel Board or as otherwise provided by law;

(10) Each community service board may receive and administer grants, gifts, contracts, moneys, and donations for purposes pertaining to the delivery of disability services or of health services;

(11) Each community service board may establish fees for the provision of disability services or health services according to the terms of contracts entered into with the department, Department of Human Services, Department of Public Health, or Department of Community Health, as appropriate; provided, however, that all fees collected shall be used solely in accordance with the statutory nonprofit and public purposes of community service boards as prescribed in this article;

(12) Each community service board may accept appropriations, loans of funds, facilities, equipment, and supplies from local governmental entities in the counties where the community service board provides services;

(13) Each member of the governing board of a community service board may, upon approval of the executive director, receive reimbursement for actual expenses incurred in carrying out the duties of such office; provided, however, that such reimbursement shall not exceed the rates and allowances set for state employees by the Office of Planning and Budget or the mileage allowance for use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier;

(14) The governing board of each community service board shall elect a chairperson and vice chairperson from among its membership. The governing board members shall also elect a secretary and treasurer from among its membership or may designate the executive director of the community service board to serve in one or both offices. Such officers shall serve for such terms as shall be prescribed in the bylaws of the community service board or until their respective successors are elected and qualified. No governing board member shall hold more than one office of the governing board of a community service board; except that the same person may serve as secretary and treasurer. The bylaws of the governing board of a community service board shall provide for any other officers of such board and the means of their selection, the terms of office of the officers, and an annual meeting to elect officers;

(15) Each community service board may have a seal and alter it;

(16) Each community service board may establish fees, rates, rents, and charges for the use of facilities of the community service board for the provision of disability services or of health services, in accordance with the terms of contracts entered into with the department, Department of Human Services, Department of Public Health, or Department of Community Health, as appropriate;

(17) Each community service board may borrow money for any business purpose and may incur debt, liabilities, and obligations for

any business purpose. A debt, liability, or obligation incurred by a community service board shall not be considered a debt, liability, or obligation of the state or any county or any municipality or any political subdivision of the state. A community service board may not borrow money as permitted by this Code section if the highest aggregate annual debt service requirements of the then current fiscal year or any subsequent year for outstanding borrowings of the community service board, including the proposed borrowing, exceed 15 percent of the total revenues of the community service board in its fiscal year immediately preceding the fiscal year in which such debt is to be incurred. Interest paid upon such borrowings shall be exempt from taxation by the state or its political subdivisions. A state contract with a community service board shall not be used or accepted as security or collateral for a debt, liability, or obligation of a community service board without the prior written approval of the commissioner;

(18) Each community service board, to the extent authorized by law and the contract for the funds involved, may carry forward without lapse fund balances and establish operating, capital, and debt reserve accounts from revenues and grants derived from state, county, and all other sources; and

(19) Each community service board may operate, establish, or operate and establish facilities deemed by the community service board as necessary and convenient for the administration, operation, or provision of disability services or of health services by the community service board and may construct, reconstruct, improve, alter, repair, and equip such facilities to the extent authorized by state and federal law.

(c) Nothing shall prohibit a community service board from contracting with any county governing authority, private or other public provider, or hospital for the provision of disability services or of health services.

(d) Each community service board exists for nonprofit and public purposes, and it is found and declared that the carrying out of the purposes of each community service board is exclusively for public benefit and its property is public property. Thus, no community service board shall be required to pay any state or local ad valorem, sales, use, or income taxes.

(e) A community service board shall not have the power to tax, the power to issue general obligation bonds or revenue bonds or revenue certificates, or the power to financially obligate the state or any county or any municipal corporation.

(f) A community service board shall not operate any facility for profit. A community service board may fix fees, rents, rates, and charges

that are reasonably expected to produce revenues, which, together with all other funds of the community service board, will be sufficient to administer, operate, and provide the following:

(1) Disability services or health services;

(2) The cost of acquiring, constructing, equipping, maintaining, repairing, and operating its facilities; and

(3) The creation and maintenance of reserves sufficient to meet principal and interest payments due on any obligation of the community service board.

(g) Each community service board may provide reasonable reserves for the improvement, replacement, or expansion of its facilities and services. Reserves under this subsection shall be subject to the limitations in paragraph (17) of subsection (b) of this Code section.

(h) Each county and municipal corporation of this state is authorized to convey or lease property of such county or municipal corporation to a community service board for its public purposes. Any property conveyed or leased to a community services board by a county or municipal corporation shall be operated by such community service board in accordance with this chapter and the terms of the community service board's agreements with the county or municipal corporation providing such conveyance or lease.

(i) Each community service board and any entity created or formed by such community service board pursuant to subsection (j) of this Code section shall keep books of account reflecting all funds received, expended, and administered by the community service board in accordance with generally accepted accounting principles. The community service board and an entity created or formed by such community service board, if any, pursuant to subsection (j) of this Code section shall assure the inclusion in its annual audit any information or procedures required by the department. The community service board and an entity created or formed by such community service board, if any, pursuant to subsection (j) of this Code section shall rotate audit firms at least once every five years. Copies of the annual audit and all findings shall be submitted to the department and the governing board of the community service board, or in the case of an entity created or formed by the community service board, if any, to the governing board of the community service board, the governing board of such entity, and the department within 60 days of completion of the audit.

(j) Subject to the approval of the commissioner and the governing board of the community service board, a community service board may create, form, or become a member of a nonprofit corporation, limited liability company, or other nonprofit entity, the voting membership of

which shall be limited to community service boards, governmental entities, nonprofit corporations, or a combination thereof, if such entity is created for purposes that are within the powers of the community service board, for the cooperative functioning of its members, or a combination thereof; provided, however, that no funds provided pursuant to a contract between the department and the community service board may be used in the formation or operation of the nonprofit corporation, limited liability company, or other nonprofit entity. No community service board, whether or not it exercises the power authorized by this subsection, shall be relieved of compliance with Chapter 14 of Title 50, relating to open and public meetings, and Article 4 of Chapter 18 of Title 50, relating to inspection of public records, unless otherwise provided by law. The provisions of this subsection relating to the approval of the commissioner to the contrary notwithstanding, nothing in this subsection shall prohibit a community service board from creating, forming, or becoming a member of a national, regional, or state trade association or business league as defined for tax exempt purposes by the United States Internal Revenue Service for the benefit of member community service boards and similar organizations.

(k) No community service board shall employ or retain in employment, either directly or indirectly through contract, any person who is receiving a retirement benefit from the Employees' Retirement System of Georgia except in accordance with the provisions of subsection (c) of Code Section 47-2-110; provided, however, that any such person who is employed as of July 1, 2004, may continue to be employed.

(l) A community service board may join or form and operate, either directly or indirectly, one or more networks of community service boards, disability or health service professionals, and other providers of disability services or health services to arrange for the provision of disability services or health services through such networks; to contract either directly or through such networks with the Department of Community Health to provide services to Medicaid beneficiaries; to provide disability services or health services in an efficient and cost-effective manner on a prepaid, capitation, or other reimbursement basis; and to undertake other disability or health services related managed care activities. For purposes of this subsection only and notwithstanding Code Section 33-3-3 or any other provision of law, a community service board shall be permitted to and shall comply with the requirements of Chapter 20A of Title 33 to the extent that such requirements apply to the activities undertaken by the community service board or by a community service board under this subsection or subsection (j) of this Code section. No community service board, whether or not it exercises the powers authorized by this subsection, shall be relieved of compliance with Article 4 of Chapter 18 of Title 50, relating to inspection of public records, unless otherwise provided by

law. Any licensed health care provider shall be eligible to apply to become a participating provider under such a plan or network that provides coverage for health care, disability services, or health services which are within the lawful scope of the provider's license, but nothing in this Code section shall be construed to require any such plan or network to provide coverage for any specific health care, disability service, or health service. (Code 1981, § 37-2-6.1, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 5; Ga. L. 2002, p. 1324, §§ 1-7, 2-4, 2-5; Ga. L. 2004, p. 150, § 1; Ga. L. 2006, p. 310, § 6/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2011, p. 705, § 5-23/HB 214; Ga. L. 2012, p. 446, § 2-58/HB 642; Ga. L. 2014, p. 309, § 5/SB 349; Ga. L. 2015, p. 5, § 37/HB 90; Ga. L. 2015, p. 385, § 7-1/HB 252; Ga. L. 2016, p. 864, § 37/HB 737.)

The 2014 amendment, effective April 16, 2014, rewrote this Code section.

The 2015 amendments. — The first 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, redesignated former paragraph (a)(1) as subsection (a.1). The second 2015 amendment, effective July 1, 2015, substituted "The governing board" for "Each governing board" throughout; designated the existing provisions of subsection (a) as paragraph (a)(1); redesignated former paragraph (a)(1) as present paragraph (a)(2); substituted "45-10-21" for "45-10-2" at the end of the first sentence of paragraph (a)(2); substituted "each community" for "a community" near the beginning of subsection (b), paragraphs (b)(1), (b)(2) and in the first sentence of paragraph (b)(14); and substituted "paragraph (17)" for "paragraph (15)" in the last sentence of subsection (g). See the Editor's notes regarding the effect of these amendments.

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "this article" for "Article 1 of Chapter 2 of Title 37" at the end of paragraph (b)(11).

Editor's notes. — Ga. L. 2015, p. 5, § 54(e)/HB 90, not codified by the General Assembly, provides: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2015 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to this Code section by Ga. L. 2015, p. 5, § 37/HB 90, was not given effect.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

37-2-6.3. Public body; lawsuits; debts, obligations, and liabilities.

(a) A community service board is a public body as provided in paragraph (1) of subsection (c) of Code Section 37-2-11.1.

(b) A community service board has the power to bring an action in its own name and, to the extent otherwise authorized by law and to the extent not immune from suit, may be sued in its own name. The state and the counties in which the community service board operates shall not be considered a party to or liable under any such litigation.

(c) The governing board of a community service board as well as the community service board itself shall be prohibited from bringing any action against the state.

(d) Debts, obligations, and liabilities of a community service board are not debts, obligations, or liabilities of the state or of the counties in which such board operates. A community service board is prohibited from entering into debts, obligations, or liabilities which are also debts, obligations, or liabilities of the state or of any county. (Code 1981, § 37-2-6.3, enacted by Ga. L. 2002, p. 1324, § 2-6; Ga. L. 2009, p. 8, § 37/SB 46; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2014, p. 309, § 6/SB 349.)

The 2014 amendment, effective April 16, 2014, added subsection (c) and redesignated former subsection (c) as present subsection (d).

37-2-6.5. Cessation of operations by community service board; notification; continuation of operations by successor board, county board of health, or outside manager.

(a) By joint action of the membership of a community service board created pursuant to Code Section 37-2-6 and the governing authority of each county within the community service board area, such community service board may cease operations; provided, however, that such community service board shall notify the commissioner at least 90 days in advance of the meeting of the community service board in which such action is to be taken. Such joint action shall indicate the date on which the community service board shall cease operations.

(b) Upon receipt of notification that a community service board intends to cease operations, the commissioner shall notify the chairperson and executive director of such community service board and the governing authority of each county within the community service board area of such board that:

(1) The department, after securing the approval of the Governor, intends to appoint a manager or management team to manage and operate the programs and services of the community service board in accordance with the provisions of paragraph (1) of subsection (c) of Code Section 37-2-10 until the department shall determine:

(A) That such community service board should continue in operation, provided one or more members appointed to such board in accordance with subsection (b) of Code Section 37-2-6 shall be removed in accordance with subparagraph (c)(3)(H) of Code Section 37-2-10, and the department, acting on behalf of the membership of the community service board, nominates a successor to a removed member and advises the county governing authority that appointed such removed member to appoint a successor;

(B) That all of the members of such community service board appointed in accordance with subsection (b) of Code Section 37-2-6 shall be removed and such community service board shall be reconstituted; and that the department shall assist the county governing authorities in making appointments to the new community service board; or

(C) In the case where the membership of such community service board is the membership of a county board of health designated in accordance with Code Section 31-3-12.1 or subsection (e) of Code Section 37-2-6, that the entire membership of the community service board should be removed and the membership of the community service board be reconstituted in accordance with subsection (b) of Code Section 37-2-6;

(2) The department, with the approval of the commissioner, intends to redesignate the boundaries of the community service board area served by such board pursuant to paragraph (1) of subsection (b) of Code Section 37-2-3 by expanding the boundaries of a community service board area served by another community service board to include the counties in the community service board area served by the community service board that intends to cease operations so that the community service board serving such area may assume responsibility for the provision of disability services within such counties;

(3) The department intends to request pursuant to Code Section 31-3-12.1 that the governing authority of a county within the community service board area of such board authorize the membership of the board of health of such county to serve as the membership of such community service board; or

(4) The department, after securing the approval of the Governor, intends to appoint a manager or management team to manage and operate the programs and services of the community service board until such time as arrangements can be made to secure one or more alternate service providers to assume responsibility for the provision of services previously provided by the community service board.

(c) If a community service board ceases operation and is succeeded by another community service board pursuant to paragraph (2), a county board of health pursuant to paragraph (3), or a manager or management team pursuant to paragraph (4) of subsection (b) of this Code section, the department shall make a determination about the disposition of all assets, equipment, and resources purchased with state or federal funding in the possession of the predecessor community service board.

(d) If a community service board ceases operation and one or more alternate service providers assume responsibility for the provision of

services previously provided by the community service board pursuant to paragraph (4) of subsection (b) of this Code section, the department shall petition the superior court of the county in which the principal office of that community service board was located for appointment of a receiver of the assets of the community service board for the protection of the board's creditors and the public. The receiver shall be authorized to marshal and sell or transfer assets of the board, and, after payment of the costs, expenses, and approved fees of the proceeding, to pay the liabilities of the community service board. The court shall then decree that the board be dissolved. Upon completion of the liquidation, any surplus remaining after paying all costs of the liquidation shall be distributed, as determined by the court, to the agencies, entities, or providers providing disability services in the community service board area formerly served by the community service board which ceased operations. At no time shall any community service board upon ceasing operations convey any of its property, except as may be otherwise authorized by a superior court in this subsection, to any private person, association, or corporation. (Code 1981, § 37-2-6.5, enacted by Ga. L. 2006, p. 310, § 7/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2014, p. 309, § 7/SB 349.)

The 2014 amendment, effective April 16, 2014, in paragraph (b)(2), substituted "a community" for "an adjacent community" near the middle and deleted "adjacent" preceding "area may" near the end.

37-2-10. Commissioner's emergency powers upon failure of community service board to establish and administer programs.

(a) Notwithstanding any other provisions of the law, the commissioner with the concurrence of the Governor is authorized to establish and administer community programs on an emergency basis in the event one or more community service boards or their respective governing boards fail to assume responsibility for the establishment and implementation of an adequate range of disability services or to provide appropriate disability services as determined by the department or substantially breach their contracts with the department pursuant to this chapter.

(b) Upon notification by a governing board of a community service board of an inability to provide an adequate range of disability services or to provide appropriate services, the commissioner, with concurrence of the Governor, may:

(1) Assume responsibility for the administration and operation of all of the community programs operated by or through such board and, in which case, the programs shall become department programs; the department shall acquire the assets of the community service

board; the community service board employees shall become employees of the department; and the governing board of the community service board shall be dissolved; or

(2) Assume responsibility for the administration and operation of one or more of the community programs operated by or through such board, in which case, such program or programs shall become a department program or programs; the department shall acquire those assets of the community service board assigned to such program or programs; and the employees of such program or programs shall become employees of the department. Any community service board programs not transferred to the department shall continue to be operated by the governing board of the community service board and the employees for such programs shall remain community service board employees.

(c)(1) Notwithstanding any other provisions of the law, the commissioner with the concurrence of the Governor is authorized to appoint a manager or management team to manage and operate the programs and services of the community service board if the commissioner finds that the community service board:

(A) Provides notice pursuant to Code Section 37-2-6.5 that the community service board intends to cease operations;

(B) Intentionally, recklessly, or negligently failed to discharge its duties pursuant to a contract with the department;

(C) Misused state or federal funds;

(D) Engaged in a fraudulent act, transaction, practice, or course of business;

(E) Endangered the life, safety, or health of a consumer served by the community service board;

(F) Failed to keep fiscal records and maintain proper control over its assets;

(G) Failed to respond to a substantial deficiency in a review or audit;

(H) Otherwise substantially failed to comply with this chapter or the rules or standards of the department; or

(I) No longer has the fiscal ability to continue to provide contracted services and, without the intervention of the department, continued provision of disability services or health services to consumers in the service area is in immediate jeopardy.

(2) In order to carry out the provisions of paragraph (1) of this subsection, the commissioner shall give written notice to the govern-

ing board of the community service board regarding the appointment of a manager or management team and the circumstances on which the appointment is based. The governing board of the community service board shall be immediately suspended upon the appointment of a manager or management team by the commissioner. The commissioner may require the community service board to pay costs incurred by the manager or management team.

(3) Subject to the determination of the commissioner, a manager or management team appointed pursuant to this subsection may:

(A) Evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of the community service board;

(B) Hire, supervise, discipline, reassign, or terminate the employment of an employee of the community service board;

(C) Reallocate the resources and manage the assets of the community service board;

(D) Require that a financial transaction, expenditure, or contract for goods and services be approved by the manager or management team;

(E) Redesign, modify, or terminate a program or service of the community service board;

(F) Direct the executive director, chief financial officer, or any other administrative or program manager, employee, or agent to take an action;

(G) Exercise a power, duty, authority, or function of the community service board or its governing board as authorized by this chapter;

(H) Recommend to the commissioner the removal of a member or members of the governing board of the community service board or the executive director of the community service board; and the provisions of any law to the contrary notwithstanding, the commissioner may remove such member or executive director from office. If the commissioner removes a member or members of the governing board of the community service board pursuant to this subparagraph, the member or members so removed shall be replaced pursuant to Code Section 37-2-6; and

(I) Report at least monthly to the commissioner on actions taken.

(4) A manager or management team appointed pursuant to this subsection may not use or dispose of any asset or funds contributed to

the community service board by the governing authority of a county or municipal corporation without the approval of such governing authority.

(5) A manager or management team appointed pursuant to this subsection shall be free from all liability, joint or several, for the manager or management team's acts, omissions, and conduct and for the acts, omissions, and conduct of their duly constituted agents in the administration of the community service board or its programs. The state shall indemnify and save them, and each of them, harmless from the effects and consequences of their acts, omissions, and conduct in their official capacity, except to the extent that such effects and consequences shall result from their own willful misconduct.

(6) If a manager or management team is appointed pursuant to this Code section, the department may:

(A) Upon a determination that the conditions that gave rise to the appointment of a manager or management team pursuant to this subsection have been met and that such manager or management team is no longer necessary, terminate the authority delegated to such manager or management team and restore authority to the governing board of the community service board to manage and operate the services and programs of the community service board; or

(B) Operate and manage the programs of the community service board until such time as arrangements can be made to secure one or more alternate service providers to assume responsibility for the provision of services previously provided by the community service board. If this option is exercised, the department shall petition the appropriate superior court for appointment of a receiver pursuant to subsection (d) of Code Section 37-2-6.5.

(7) Nothing in this subsection shall be construed to prohibit the department from canceling a contract with a community service board. (Code 1933, § 88-610, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2006, p. 310, § 8/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2014, p. 309, § 8/SB 349; Ga. L. 2015, p. 385, § 7-2/HB 252.)

The 2014 amendment, effective April 16, 2014, inserted "or their respective governing boards" in subsection (a); inserted "governing board of a" in subsection (b); in paragraph (b)(1), deleted "and" following "community service board;" in the middle and inserted "; and the governing board of the community service board shall be dissolved" near the end; inserted "governing board of the" in paragraph (b)(2); deleted "in extenuating circumstances," following "provisions of the law," near the beginning of paragraph (c)(1); substituted "the community service board" for "such board" in subparagraph (c)(1)(A); inserted "governing board of the" in the first sentence of

paragraph (c)(2) and in subparagraph (c)(6)(A); added the second sentence in paragraph (c)(2); in subparagraph (c)(3)(F), deleted "the members of the community service board," following "Direct" and inserted ", employee, or agent"; inserted "or its governing board" in subparagraph (c)(3)(G); in subparagraph (c)(3)(H), inserted "or members of the governing board of the community service board" near the beginning of the first sentence and inserted the last sentence; added paragraph (c)(5); and redesignated former paragraphs (c)(5) and (c)(6) as present paragraphs (c)(6) and (c)(7), respectively.

The 2015 amendment, effective July 1, 2015, substituted "team appointed" for "team appoint" near the beginning of the first sentence of paragraph (c)(5).

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

CHAPTER 3

EXAMINATION, TREATMENT, ETC., FOR MENTAL ILLNESS

Article 3

Examination, Hospitalization, and Treatment of Involuntary Patients

Part 1

Emergency Receiving Facilities for Examination of Persons Apprehended Pursuant to Physician's Certificate, Court Order, etc.

Sec.

37-3-41. Emergency admission based on physician's certification or court order; report by apprehending officer; entry of treatment order into patient's clinical record; authority of other personnel to act under statute.

37-3-44. Giving person and representatives notice of their rights upon admission to emergency receiving facility.

Part 3

Determination of Need for Treatment, Admission to Treatment Facilities

Sec.

37-3-83. Procedure for continued involuntary hospitalization.

Article 6

Rights and Privileges of Patients, Their Representatives, etc., Generally

Part 1

General Provisions

37-3-147. Representatives and guardians ad litem; notification provisions; duration and scope of guardianship ad litem.

37-3-150. Right to appeal orders of probate court, juvenile court, or hearing examiner; payment of costs of appeal; right to subsequent appeal; right to legal counsel on appeal.

Law reviews. — For comment, "Having an Affair May Shorten Your Life: The Ashley Madison Suicides," see 33 Georgia St. U.L. Rev. 455 (2017).

ARTICLE 1

GENERAL PROVISIONS

37-3-1. Definitions.

JUDICIAL DECISIONS

Definition of mentally ill outpatient not met. — There was no evidence to support a finding that without involuntary treatment, the defendant, who had a good insight into the defendant's condition and was compliant and independently caring for self, would be a danger of imminently becoming an inpatient again and thus, the defendant did not fit the definition of mentally ill outpatient. Coogler v. State, 324 Ga. App. 796, 751 S.E.2d 584 (2013).

RESEARCH REFERENCES

ALR. — Civil liability of psychiatrist arising out of patient's violent conduct resulting in injury to or death of patient or third party allegedly caused in whole or part by mental disorder, 80 A.L.R.6th 469.

37-3-4. Immunity of hospitals, physicians, peace officers, or other private or public hospital employees from liability for actions taken in good faith compliance with admission and discharge provisions of chapter; immunity not applicable to failure to meet standard of care in provision of treatment.

JUDICIAL DECISIONS

Failure to comply did not give rise to medical malpractice claim. — Trial court erred in construing Count II of the Third Complaint as a medical malpractice claim as the failure to comply with statutory notification and discharge requirements, pursuant to O.C.G.A. §§ 37-3-4, 37-3-24, and 37-3-95, did not involve the exercise of professional judgment or the care or treatment of the patient and, thus, that count was not subject to the medical malpractice statute of repose or the expert affidavit statute. Curles v. Psychiatric Solutions, Inc., 343 Ga. App. 719, 808 S.E.2d 237 (2017), cert. denied, No. S18C0519, 2018 Ga. LEXIS 181 (Ga. 2018); cert. denied, No. S18C0520, 2018 Ga. LEXIS 182 (Ga. 2018).

Breach of psychiatrist-patient relationship is issue of fact. — Trial court did not err in denying a psychiatrist's motion for summary judgment in a patient's medical malpractice action because whether the psychiatrist breached duties arising from the psychiatrist-patient relationship was an issue of fact; under O.C.G.A. §§ 37-3-4 and 51-1-27, the psychiatrist could be held liable if the treatment of the patient fell below the requisite standard of care, and that failure proximately caused the patient's injury. Peterson v. Reeves, 315 Ga. App. 370, 727 S.E.2d 171 (2012).

ARTICLE 2

HOSPITALIZATION AND TREATMENT OF VOLUNTARY PATIENTS

37-3-24. Transfer of involuntary patients to voluntary status; notice of transfer and of discharge of patients so transferred; discharge of transferred patient charged with criminal offense.

JUDICIAL DECISIONS

Failure to comply did not give rise to medical malpractice claim. — Trial court erred in construing Count II of the Third Complaint as a medical malpractice claim as the failure to comply with statutory notification and discharge requirements, pursuant to O.C.G.A. §§ 37-3-4, 37-3-24, and 37-3-95, did not involve the exercise of professional judgment or the care or treatment of the patient and, thus, that count was not subject to the medical malpractice statute of repose or the expert affidavit statute. Curles v. Psychiatric Solutions, Inc., 343 Ga. App. 719, 808 S.E.2d 237 (2017), cert. denied, No. S18C0519, 2018 Ga. LEXIS 181 (Ga. 2018); cert. denied, No. S18C0520, 2018 Ga. LEXIS 182 (Ga. 2018).

ARTICLE 3

EXAMINATION, HOSPITALIZATION, AND TREATMENT OF INVOLUNTARY PATIENTS

Part 1

Emergency Receiving Facilities for Examination of Persons Apprehended Pursuant to Physician's Certificate, Court Order, etc.

37-3-41. Emergency admission based on physician's certification or court order; report by apprehending officer; entry of treatment order into patient's clinical record; authority of other personnel to act under statute.

(a) Any physician within this state may execute a certificate stating that he or she has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, such person appears to be a mentally ill person requiring involuntary treatment. A physician's certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him or her forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he or she shall be received for examination.

(b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such person into custody and deliver him or her forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is a mentally ill person requiring involuntary treatment. The court order shall expire seven days after it is executed.

(c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which such person was taken into custody. The report and either the physician's certificate or court order authorizing such taking into custody shall be made a part of the patient's clinical record.

(d) Any psychologist, clinical social worker, licensed professional counselor, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, a licensed professional counselor, or a clinical nurse specialist in psychiatric/mental health acting under this Code section. For purposes of this Code section, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist; the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker; the term "licensed professional counselor" means any person authorized under the laws of this state to practice as a licensed professional counselor; and the term "clinical nurse specialist in psychiatric/mental health" means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health. (Code 1933, § 88-504.2, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1971, p. 796, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1981, p. 996, § 4; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 2531, § 1.1; Ga. L. 1994, p. 1249, § 1; Ga. L. 2014, p. 347, § 1/SB 65; Ga. L. 2015, p. 4, § 1/SB 53; Ga. L. 2017, p. 617, § 1/SB 52.)

The 2014 amendment, effective July 1, 2014, and repealed effective March 15, 2015, in subsection (a), inserted "or she" in the first and third sentences, substituted "such person" for "the person" in the first sentence and inserted "or her" in the third sentence and near the middle of the first sentence of subsection (b); and, in subsection (d), inserted "licensed professional counselor," in the first sentence, inserted "a licensed professional counselor," in the second sentence, in the third sentence, substituted "Code section" for "subsection" near the beginning, substituted a semicolon for a comma following "licensed psychologist" near the middle, and substituted "clinical social worker; the term 'licensed professional counselor' means any person authorized under the laws of this state to practice as a licensed professional counselor;" for "clinical social worker," in the middle.

Editor's notes. — Ga. L. 2014, p. 347, § 2A/SB 65, as amended by Ga. L. 2015, p. 4, § 1/SB 53, which provides for the repeal of the amendment made by § 1 of that Act was repealed by Ga. L. 2017, p. 617, § 1/SB 52, effective May 9, 2017.

JUDICIAL DECISIONS

No authority to take defendant into custody. — Officers were not acting within the scope of their lawful authority when they took the defendant into custody because they did not have a physician's certificate or court order as required by O.C.G.A. § 37-3-41, and it was undisputed that the defendant had not committed, nor was the defendant suspected of committing, a penal offense as mandated by O.C.G.A. § 37-3-42(a). Boatright v. State, 327 Ga. App. 785, 761 S.E.2d 176 (2014).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of overt act requirement of state statutes providing for commitment of sexually dangerous persons, 56 A.L.R. 6th 647.

37-3-42. Emergency admission of persons arrested for penal offenses; report by officer; entry of report into clinical record.

JUDICIAL DECISIONS

No authority to take defendant into custody. — Officers were not acting within the scope of their lawful authority when they took the defendant into custody because they did not have a physician's certificate or court order as required by O.C.G.A. § 37-3-41, and it was undisputed that the defendant had not committed, nor was the defendant suspected of committing, a penal offense as mandated by O.C.G.A. § 37-3-42(a). Boatright v. State, 327 Ga. App. 785, 761 S.E.2d 176 (2014).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of overt act requirement of state statutes providing for commitment of sexually dangerous persons, 56 A.L.R. 6th 647.

37-3-44. Giving person and representatives notice of their rights upon admission to emergency receiving facility.

(a) Immediately upon arrival of a person at an emergency receiving facility under Code Section 37-3-43 or as soon thereafter as reasonably possible given a person's condition or mental state at the time of arrival, the facility shall give the person written notice of his or her right to petition for a writ of habeas corpus or for a protective order under Code Section 37-3-148. This written notice shall also inform the person who has mental illness that he or she has a right to legal counsel and that, if the person is unable to afford counsel, the court will appoint counsel.

(b) The notice informing the person's representatives of such person's hospitalization in an emergency receiving facility shall include a clear notification that the representatives may petition for a writ of habeas corpus or for a protective order under Code Section 37-3-148. (Code 1933, § 88-504.6, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1986, p. 1098, § 2; Ga. L. 2016, p. 313, § 1/SB 271.)

The 2016 amendment, effective July 1, 2016, in subsection (a), substituted "person" for "patient" throughout, in the first sentence, inserted "or as soon thereafter as reasonably possible given a person's condition or mental state at the time of arrival," and inserted "or her", and, in the second sentence, substituted "who has mental illness that he or she" for "that he"; and, in subsection (b), substituted "person's representatives of such person's" for "patient's representatives of the patient's".

Part 2

Evaluating Facilities for Examination of Persons Ordered to Undergo Evaluation for Mental Illness

37-3-61. Initiation of proceedings for court ordered evaluation.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of overt act requirement of state statutes providing for commitment of sexually dangerous persons, 56 A.L.R. 6th 647.

PART 3

DETERMINATION OF NEED FOR TREATMENT, ADMISSION TO TREATMENT FACILITIES

37-3-81. Procedure for detention of patient beyond evaluation period; final disposition.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of overt act requirement of state statutes providing for commitment of sexually dangerous persons, 56 A.L.R. 6th 647.

37-3-83. Procedure for continued involuntary hospitalization.

(a) If it is necessary to continue involuntary treatment of a hospitalized person who has mental illness beyond the end of the period during which the treatment facility is currently authorized under this chapter to retain such person, the chief medical officer prior to the expiration of the period shall seek an order authorizing such continued treatment in the manner provided in this Code section. The chief medical officer may seek such an order authorizing continued involuntary treatment involving inpatient treatment, outpatient treatment, or both under the procedures of this Code section and Code Section 37-3-93.

(b) If the chief medical officer finds that continued involuntary treatment is necessary for a person who was admitted while serving a criminal sentence but whose sentence is about to expire or for a person who was hospitalized while under the jurisdiction of a juvenile court but who is about to reach the age of 17, the chief medical officer shall seek an order authorizing such continued treatment in the manner provided in this Code section; and this chapter shall apply fully to such a person after that time.

(c) A Committee for Continued Involuntary Treatment Review shall be established by the chief medical officer of each hospital and shall consist of not less than five persons of professional status, at least one of whom shall be a physician and at least two others of whom shall be either physicians or psychologists. The committee may conduct its meetings with a quorum of any three members, at least one of whom shall be a physician. The function of this committee shall be to review and evaluate the updated individualized service plan of each person who has mental illness of the hospital and to report to the chief medical officer its recommendations concerning the person's need for continued involuntary treatment. No person who has responsibility for the care and treatment of the person for whom continued involuntary treatment is requested shall serve on any committee which reviews such person's case.

(d) If the chief medical officer desires to seek an order under this Code section authorizing continued involuntary treatment for up to 12 months beyond the expiration of the currently authorized period of hospitalization, he or she shall first file a notice of such intended action with the Committee for Continued Involuntary Treatment Review, which notice shall be forwarded to the committee at least 40 days prior to the expiration of that period.

(e) If, within 40 days of the expiration of an order for involuntary treatment relating to a person who has mental illness for whom discharge has been planned, the chief medical officer determines discharge would now be unsafe, the chief medical officer may execute a certificate to be filed with a petition for continued involuntary treatment pursuant to this chapter. The certificate shall indicate the basis for the determination that the person is a person who has mental illness requiring involuntary treatment as defined in paragraph (12) of Code Section 37-3-1, the reason the process for obtaining an order for continued hospitalization was not commenced 40 days or more prior to the expiration date, and the reason continued hospitalization is the least restrictive alternative available. Referral to the Committee for Continued Involuntary Treatment Review is not required prior to the filing of a certificate and petition under this subsection. Under this subsection, the chief medical officer shall serve the petition for an order authorizing continued involuntary treatment along with copies of the updated individualized service plan on the Office of State Administrative Hearings and shall also serve such petition along with a copy of the updated individualized service plan on the person who has mental illness. A copy of the petition shall be served on the person's representatives. The petition shall contain a plain and simple statement that the person who has mental illness or his or her representatives may file a request for a hearing with a hearing examiner appointed pursuant to Code Section 37-3-84 within ten days after service of the petition, that the person who has mental illness has a right to counsel at the hearing, that the person who has mental illness or his or her representatives may apply immediately to the court to have counsel appointed if such person cannot afford counsel, and that the court will appoint counsel for the person who has mental illness unless the person indicates in writing that he or she does not desire to be represented by counsel or has made his or her own arrangements for counsel. If, following the filing of the certificate and petition under this subsection, the order authorizing the treatment facility to retain the person who has mental illness expires, such facility shall be authorized to retain the person for continued involuntary treatment until a ruling is issued. If at any time the chief medical officer determines that the person who has mental illness, after consideration of the recommendations of the treatment team, is no longer a person who has mental illness requiring involun-

tary inpatient treatment, the person shall be immediately discharged from involuntary inpatient treatment pursuant to subsection (b) of Code Section 37-3-85.

(f) Within five days of the date of the notice, the committee shall meet to consider the matter of the chief medical officer's intention to seek an order for continued involuntary treatment. Prior to the committee's meeting, the person who has mental illness and his or her representatives shall be notified of the following: the purpose of such meeting, the time and place of such meeting, their right to be present at such meeting, and their right to present any alternative individualized service plan secured at their expense. In those cases in which the person will not or cannot appear, at least one member of the committee will make all reasonable efforts to interview the person who has mental illness and report to the committee. The physician or psychologist proposing the treatment plan shall present an updated individualized service plan for the person to the committee. The committee shall report to the chief medical officer or his or her designee, other than the physician or psychologist proposing the treatment plan or a member of the committee, its written recommendations along with any minority recommendations which may also be submitted. Such report shall specify whether or not the person has a mental illness requiring involuntary treatment and whether continued hospitalization is the least restrictive alternative available.

(g) If, after considering the committee's recommendations and minority recommendations, if any, the chief medical officer or his or her designee, other than the attending physician or a member of the committee, determines that the person is not a person who has mental illness requiring involuntary treatment, the person shall be immediately discharged from involuntary hospitalization pursuant to subsection (b) of Code Section 37-3-85.

(h) If, after considering the committee's recommendations and minority recommendations, if any, the chief medical officer or his or her designee, other than the attending physician or member of the committee, determines that the person has a mental illness requiring involuntary treatment, he or she shall, within five days after receiving the committee's recommendations, serve a petition for an order authorizing continued involuntary treatment along with copies of the updated individualized service plan and the committee's report on the Office of State Administrative Hearings and shall also serve such petition along with a copy of the updated individualized service plan on the person who has mental illness. A copy of the petition shall be served on the person's representatives. The petition shall contain a plain and simple statement that such person or his or her representatives may file a request for a hearing with a hearing examiner appointed pursuant to

Code Section 37-3-84 within ten days after service of the petition, that the person has a right to counsel at the hearing, that the person or his or her representatives may apply immediately to the court to have counsel appointed if the person cannot afford counsel, and that the court will appoint counsel for the person unless the person indicates in writing that he or she does not desire to be represented by counsel or has made his or her own arrangements for counsel.

(i) If a hearing is not requested by the person with mental illness or his or her representatives within ten days of service of the petition on the person and his or her representatives, the hearing examiner shall make an independent review of the committee's report, the updated individualized service plan, and the petition. If he or she concludes that continued involuntary treatment may not be necessary or if he or she finds any member of the committee so concluded, then he or she shall order that a hearing be held pursuant to subsection (j) of this Code section. If he or she concludes that continued involuntary treatment is necessary, then he or she shall order continued involuntary treatment involving inpatient treatment, outpatient treatment, or both for a period not to exceed one year.

(j) If a hearing is requested within ten days of service of the petition on the person who has mental illness and his or her representatives or if the hearing examiner orders a hearing pursuant to subsection (i) or (k) of this Code section, the hearing examiner shall set a time and place for the hearing to be held within 25 days of the time the hearing examiner receives the request but no later than the day on which the current order of involuntary inpatient treatment expires, unless such hearing occurs after the expiration of the order pursuant to subsection (e) of this Code section. Notice of the hearing shall be served on the person, his or her representatives, the treatment facility, and, when appropriate, the counsel for the person. The hearing examiner, within his or her discretion, may grant a change of venue for the convenience of parties or witnesses. Such hearing shall be a full and fair hearing, except that the person's attorney, when the person is unable to attend the hearing and is incapable of consenting to a waiver of his or her appearance, may move that the person not be required to appear; however, the record shall reflect the reasons for the hearing examiner's actions. After such hearing, the hearing examiner may issue any order which the court is authorized to issue under Code Section 37-3-81.1 and subject to the limitations of Code Section 37-3-81.1, provided that a person who is an outpatient who does not meet the requirements for discharge under paragraph (2) of subsection (a) of Code Section 37-3-81.1 shall nevertheless be discharged; and provided, further, that the hearing examiner may order the person's continued inpatient treatment, outpatient treatment, or both for a period not to exceed one year, subject to the power to discharge the person under subsection (b)

of Code Section 37-3-85 or under Code Section 37-3-94. In the event that an order approving continued hospitalization is entered for a person who was admitted while serving a criminal sentence under the jurisdiction of the Department of Corrections, but whose sentence is about to expire, the chief medical officer shall serve a copy of such order upon the Department of Corrections within five working days of the issuance of the order.

(k) The hearing examiner for a person who has mental illness who was admitted under the jurisdiction of the juvenile court and who reaches the age of 17 without having had a full and fair hearing pursuant to any provisions of this chapter or without having waived such hearing shall order that a hearing be held pursuant to subsection (j) of this Code section. (Code 1933, § 88-506.6, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-506.5, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1979, p. 723, § 9; Ga. L. 1986, p. 1098, § 4; Ga. L. 1991, p. 1059, § 17; Ga. L. 2016, p. 313, § 2/SB 271; Ga. L. 2017, p. 774, § 37/HB 323.)

The 2016 amendment, effective July 1, 2016, rewrote this Code section.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "a person" for "an individual" twice in subsection (b) and once in the last sentence of subsection (j), and substituted "such order" for "that order" near the end of the last sentence of subsection (j).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "subsection (j)" was substituted for "subsection (i)" in the second sentence of subsection (i).

Part 4

Involuntary Outpatient Care

37-3-95. Discharge of patients under criminal charges.

JUDICIAL DECISIONS

Failure to comply did not give rise to medical malpractice claim. — Trial court erred in construing Count II of the Third Complaint as a medical malpractice claim as the failure to comply with statutory notification and discharge requirements, pursuant to O.C.G.A. §§ 37-3-4, 37-3-24, and 37-3-95, did not involve the exercise of professional judgment or the care or treatment of the patient and, thus, that count was not subject to the medical malpractice statute of repose or the expert affidavit statute. Curles v. Psychiatric Solutions, Inc., 343 Ga. App. 719, 808 S.E.2d 237 (2017), cert. denied, No. S18C0519, 2018 Ga. LEXIS 181 (Ga. 2018); cert. denied, No. S18C0520, 2018 Ga. LEXIS 182 (Ga. 2018).

ARTICLE 6

RIGHTS AND PRIVILEGES OF PATIENTS, THEIR REPRESENTATIVES, ETC., GENERALLY

PART 1

GENERAL PROVISIONS

37-3-147. Representatives and guardians ad litem; notification provisions; duration and scope of guardianship ad litem.

(a) At the time a person who has mental illness is admitted to any facility under this chapter or as soon thereafter as reasonably possible given the person's condition or mental state at the time of admission, such facility shall use diligent efforts to secure the names and addresses of at least two representatives, which names and addresses shall be entered in the person's clinical record.

(b) The patient may designate one representative; the second representative or, in the absence of designation of one representative by the patient, both representatives shall be selected by the facility. If the facility is to select both representatives, it must make one selection from among the following persons in the order of listing: the patient's legal guardian, spouse, adult child, parent, attorney, adult next of kin, or adult friend, provided that, in the case of a patient whose representative or representatives have been appointed by the court under Code Section 37-3-62, the facility shall not select a different representative. The second representative shall also be selected from the above list but without regard to the order of listing, provided that the second representative shall not be the person who filed the petition to have the patient admitted to the facility.

(c) If the facility is unable to secure at least two representatives after diligent search or if the department is the guardian of the patient, that fact shall be entered in the patient's clinical record and the facility shall apply to the court in the county of the patient's residence for the appointment of a guardian ad litem, which guardian ad litem shall not be the department. On application of any person or on its own motion, the court may also appoint a guardian ad litem for a patient for whom two representatives have been named whenever the appointment of a guardian ad litem is deemed necessary for protection of the patient's rights. Such guardian ad litem shall also act as representative of the patient and shall have the powers granted to representatives by this chapter.

(d) At any time notice is required by this chapter to be given to the patient's representatives, such notice shall be served on the represen-

tatives designated under this Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless otherwise provided, notice may be served in person or by first-class mail. When notice is served by mail, a record shall be made of the date of mailing and shall be placed in the patient's clinical record. Service shall be completed upon mailing.

(e) At any time notice is required by this chapter to be given to the patient, the date on which notice is given shall be entered on the patient's clinical record. If the patient is unable to comprehend the written notice, a reasonable effort shall be made to explain the notice to him.

(f) At the time a court enters an order pursuant to this chapter, such order and notice of the date of entry of the order shall be served on the patient and his representatives as provided in subsection (d) of this Code section.

(g) Notice of an involuntary patient's admission to a facility shall be given to his representatives in writing. If such involuntary admission is to an emergency receiving facility, notice shall also be given by that facility to the patient's representatives by telephone or in person as soon as possible.

(h) In every instance in which a court shall appoint a guardian ad litem for any person pursuant to the terms of this chapter, such guardianship shall be for the limited purpose stated in the order of the court and shall expire automatically after 90 days or after a lesser time stated in the order. The responsibility of the guardian ad litem shall not extend beyond the specific purpose of the appointment. (Code 1933, § 88-502.15, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1971, p. 623, § 1; Ga. L. 1971, p. 784, § 1; Code 1933, § 88-502.19, enacted by Ga. L. 1971, p. 807, § 1; Code 1933, § 88-502.18, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1995, p. 10, § 37; Ga. L. 2016, p. 313, § 3/SB 271; Ga. L. 2017, p. 774, § 37/HB 323.)

The 2016 amendment, effective July 1, 2016, in subsection (a), substituted "person who has mental illness" for "patient" near the beginning, inserted "or as soon thereafter as reasonably possible given the person's condition or mental state at the time of admission" near the middle, and substituted "person's" for "patient's" near the end.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "such facility" for "that facility" near the middle of subsection (a).

37-3-150. Right to appeal orders of probate court, juvenile court, or hearing examiner; payment of costs of appeal; right to subsequent appeal; right to legal counsel on appeal.

The patient, the patient's representatives, or the patient's attorney may appeal any order of the probate court or hearing officer rendered in

a proceeding under this chapter to the superior court of the county in which the proceeding was held, except as otherwise provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile court rendered in a proceeding under this chapter to the Court of Appeals or the Supreme Court. The appeal to the superior court shall be made in the same manner as appeals from the probate court to the superior court, except that the appeal shall be heard before the court sitting without a jury as soon as practicable but not later than 30 days following the date on which the appeal is filed with the clerk of the superior court. The appeal from the order of the juvenile court to the Court of Appeals or the Supreme Court shall be as provided by law but shall be heard as expeditiously as possible. The patient must pay all costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The patient shall retain all rights of review of any order of the superior court, the Court of Appeals, or the Supreme Court, as provided by law. The patient shall have a right to counsel or, if unable to afford counsel, shall have counsel appointed for the patient by the court. The appeal rights provided to the patient, the patient's representatives, or the patient's attorney in this Code section are in addition to any other appeal rights which the parties may have, and the provision of the right for the patient, the patient's representatives, or the patient's attorney to appeal does not deny the right to the Department of Behavioral Health and Developmental Disabilities to appeal under the general appeal provisions of Code Sections 5-3-2 and 5-3-3. (Code 1933, § 88-502.16, enacted by Ga. L. 1969, p. 505, § 1; Code 1933, § 88-502.19, enacted by Ga. L. 1978, p. 1789, § 1; Ga. L. 1986, p. 982, § 11; Ga. L. 1994, p. 1072, § 1; Ga. L. 1995, p. 10, § 37; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2016, p. 883, §§ 3-13, 3-14/HB 927.)

The 2016 amendment, effective January 1, 2017, substituted "Court of Appeals or the Supreme Court" for "Court of Appeals and the Supreme Court" twice and substituted "Court of Appeals, or the Supreme Court" for "Court of Appeals, and the Supreme Court" in the fifth sentence. See Editor's notes for applicability.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 205 (2016).

PART 2

RIGHTS AND PRIVILEGES AS TO MANNER OF CARE AND TREATMENT AND AS TO MAINTENANCE AND RELEASE OF CLINICAL RECORDS

Cross references. — Medical reports in narrative form, § 24-8-826. When medical information may be released, § 24-12-1 et seq.

37-3-162. Patients' care and treatment rights.

JUDICIAL DECISIONS

Breach of duty is an issue of fact. — Trial court did not err in denying a psychiatrist's motion for summary judgment in a patient's medical malpractice action because whether the psychiatrist breached duties arising from the psychiatrist-patient relationship was an issue of fact; pursuant to O.C.G.A. § 9-11-9.1, the patient presented expert testimony that the psychiatrist's breaches of the duty of care directly resulted in the foreseeable harm of the patient's attempting suicide. Peterson v. Reeves, 315 Ga. App. 370, 727 S.E.2d 171 (2012).

Failure to commit as breach of duty of care. — Under some circumstances, the failure to commit may constitute a breach of the well-established duty of care physicians owe patients, and when a fact question has been created on that issue, the fact question is for the jury. Peterson v. Reeves, 315 Ga. App. 370, 727 S.E.2d 171 (2012).

37-3-163. Recognition of patient's physical integrity; rights to refuse medication; obtaining consent to treatment and surgery; emergency surgery; immunity of hospital or physician; direction of notice of actions taken under Code section.

JUDICIAL DECISIONS

Motion to involuntarily medicate defendant improperly granted. — Trial court erred in granting the state's motion to involuntarily medicate the defendant in an attempt to make the defendant competent to stand trial because the defendant argued that the defendant had a statutory right to avoid involuntary medication; and, under the four-part Sell test (Sell v. United States, 539 U.S. 166, 123 S. Ct. 2174, 156 L. E. 2d 197 (2003)), the state failed to demonstrate that involuntarily medicating the defendant would significantly further important government interests and that the administration of the medication was medically appropriate for the defendant as the trial court failed to specify the anti-psychotic medication or the dosages that could be forcibly administered to the defendant. Henderson v. State, 344 Ga. App. 89, 808 S.E.2d 752 (2017).

37-3-167. Right of patient to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.

Cross references. — Release of medical information generally, § 24-12-1 et seq.

37-3-168. Right of patient's attorney to interview physicians, psychologists, and staff attending patient; establishment of regulations as to release of information to patient's attorney.

Cross references. — Release of medical information generally, § 24-12-1 et seq.

CHAPTER 4

HABILITATION OF THE DEVELOPMENTALLY DISABLED GENERALLY

Article 2

Procedures for Obtaining Services from the Department

Part 2

Court Ordered Services

Sec.
37-4-40.1 through 37-4-40.5 [Repealed].

Article 5

Rights and Privileges of Developmentally Disabled Persons Undergoing Habilitation, Their Representatives, etc., Generally

Part 1

General Provisions

37-4-110. Appeal rights of clients, their representatives, or attorneys; payment of costs of appeal; right of client to subsequent appeal and to legal counsel on appeal.

ARTICLE 2

PROCEDURES FOR OBTAINING SERVICES FROM THE DEPARTMENT

Part 2

Court Ordered Services

37-4-40.1 through 37-4-40.5.

Repealed by Ga. L. 2011, p. 337, § 5/HB 324, effective July 1, 2011.

Editor's notes. — Ga. L. 2015, p. 5, § 37/HB 90, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, deleted the reservation of these Code sections.

37-4-42. Procedure for continuation of court ordered habilitation.

Law reviews. — For article, "Disability Constitutional Law," see 63 Emory L. J. 527 (2014). For article, "Disability Constitutional Law," see 63 Emory L. J. 527 (2014).

ARTICLE 5

RIGHTS AND PRIVILEGES OF DEVELOPMENTALLY DISABLED PERSONS UNDERGOING HABILITATION, THEIR REPRESENTATIVES, ETC., GENERALLY

Part 1

General Provisions

37-4-110. Appeal rights of clients, their representatives, or attorneys; payment of costs of appeal; right of client to subsequent appeal and to legal counsel on appeal.

The client, the client's representatives, or the client's attorney may appeal any order of the probate court or administrative law judge rendered in a proceeding under this chapter to the superior court of the county in which the proceeding was held, except as otherwise provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile court rendered in a proceeding under this chapter to the Court

of Appeals or the Supreme Court. The appeal to the superior court shall be made in the same manner as appeals from the probate court to the superior court, except that the appeal shall be heard before the court sitting without a jury as soon as practicable but not later than 30 days following the date on which the appeal is filed with the clerk of the superior court. The appeal from the order of the juvenile court to the Court of Appeals or the Supreme Court shall be as provided by law but shall be heard as expeditiously as possible. The client must pay all costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The client shall retain all rights of review of any order of the superior court, the Court of Appeals, or the Supreme Court as provided by law. The client shall have a right to counsel or, if unable to afford counsel, shall have counsel appointed for the client by the court. The appeal rights provided to the client, the client's representatives, or the client's attorney in this Code section are in addition to any other appeal rights which the parties may have, and the provision of the right for the client, the client's representatives, or the client's attorney to appeal does not deny the right to the Department of Behavioral Health and Developmental Disabilities to appeal under the general appeal provisions of Code Sections 5-3-2 and 5-3-3. (Code 1933, § 88-2503.19, enacted by Ga. L. 1978, p. 1826, § 1; Ga. L. 1986, p. 982, § 12; Ga. L. 1994, p. 1072, § 3; Ga. L. 1995, p. 10, § 37; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2011, p. 337, § 8/HB 324; Ga. L. 2016, p. 883, §§ 3-13, 3-14/HB 927.)

The 2016 amendment, effective January 1, 2017, substituted "Court of Appeals or the Supreme Court" for "Court of Appeals and the Supreme Court" twice and substituted "Court of Appeals, or the Supreme Court" for "Court of Appeals, and the Supreme Court" in the fifth sentence. See Editor's notes for applicability.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016).

Part 2

Rights and Privileges as to Manner of Habilitation and as to Maintenance and Release of Clinical Records

Cross references. — When medical information may be released, § 24-12-1. Disclosure of medical records, § 24-12-11 et seq.

37-4-126. Right of client to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.

Cross references. — Release of medical information generally, § 24-12-1 et seq.

37-4-127. Right of client's attorney to interview persons in charge of client's habilitation in a facility; establishment of regulations as to release of information to client's attorney.

Cross references. — Release of medical information generally, § 24-12-1 et seq.

CHAPTER 5

COMMUNITY SERVICES FOR THE DEVELOPMENTALLY DISABLED

Sec.
37-5-10. Timetable for implementation of this chapter [Repealed].

37-5-10. Timetable for implementation of this chapter.

Repealed by Ga. L. 2015, p. 385, § 4-7/HB 252, effective July 1, 2015.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 700, § 10; Ga. L. 2009, p. 453, § 3-17/HB 228.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

CHAPTER 7

HOSPITALIZATION AND TREATMENT OF ALCOHOLICS, DRUG DEPENDENT INDIVIDUALS, AND DRUG ABUSERS

Article 3

Examination, Hospitalization, and Treatment of Involuntary Patients

Part 1

Emergency Receiving Facilities for Examination of Persons Apprehended Pursuant to Physician's Certificate or Court Order

Sec.
37-7-41. Emergency involuntary treatment; who may certify need; delivery for examination; report of delivery required.

Article 6

Rights and Privileges of Patients, Their Representatives, and Others Generally

Part 1

General Provisions

Sec.
37-7-150. Right to appeal orders of probate court, juvenile court, or hearing examiner; payment of costs of appeal; right of patient to subsequent appeal; right of patient to legal counsel on appeal.

ARTICLE 3

EXAMINATION, HOSPITALIZATION, AND TREATMENT OF INVOLUNTARY PATIENTS

Part 1

Emergency Receiving Facilities for Examination of Persons Apprehended Pursuant to Physician's Certificate or Court Order

37-7-41. Emergency involuntary treatment; who may certify need; delivery for examination; report of delivery required.

(a) Any physician within this state may execute a certificate stating that he has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. A physician's certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to

deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

(b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such person into custody and deliver him forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. The court order shall expire seven days after it is executed.

(c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which such person was taken into custody. The report and either the physician's certificate or court order authorizing such custody shall be made a part of the patient's record.

(d) Any psychologist, clinical social worker, licensed professional counselor, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, a licensed professional counselor, or a clinical nurse specialist in psychiatric/mental health acting under this Code section. For purposes of this Code section, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist; the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker; the term "licensed professional counselor" means any person authorized under the laws of this state to practice as a licensed professional counselor; and the term "clinical nurse specialist in psychiatric/mental health" means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in

psychiatric/mental health. (Code 1933, § 88-404.7, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-404.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1981, p. 996, § 2; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 2531, § 2; Ga. L. 1994, p. 1249, § 2; Ga. L. 2014, p. 347, § 2/SB 65; Ga. L. 2015, p. 4, § 1/SB 53; Ga. L. 2016, p. 864, § 37/HB 737; Ga. L. 2017, p. 617, § 1/SB 52.)

The 2014 amendment, effective July 1, 2014, and repealed effective June 30, 2018, in subsection (d), inserted "licensed professional counselor," in the first sentence; inserted "a licensed professional counselor," in the second sentence; and in the third sentence, substituted "Code section" for "subsection" near the beginning, substituted a semicolon for a comma following "licensed psychologist" near the middle, and substituted "clinical social worker; the term 'licensed professional counselor' means any person authorized under the laws of this state to practice as a licensed professional counselor;" for "clinical social worker," in the middle.

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "psychiatric/mental health" for "psychiatric mental health" at the end of the last sentence of subsection (d).

Editor's notes. — Ga. L. 2014, p. 347, § 2A/SB 65, as amended by Ga. L. 2015, p. 4, § 1/SB 53, which provides for the repeal of the amendment made by § 1 of that Act was repealed by Ga. L. 2017, p. 617, § 1/SB 52, effective May 9, 2017.

ARTICLE 6

RIGHTS AND PRIVILEGES OF PATIENTS, THEIR REPRESENTATIVES, AND OTHERS GENERALLY

PART 1

GENERAL PROVISIONS

37-7-150. Right to appeal orders of probate court, juvenile court, or hearing examiner; payment of costs of appeal; right of patient to subsequent appeal; right of patient to legal counsel on appeal.

The patient, the patient's representatives, or the patient's attorney may appeal any order of the probate court or hearing officer rendered in a proceeding under this chapter to the superior court of the county in which the proceeding was held, except as otherwise provided in Article 6 of Chapter 9 of Title 15, and may appeal any order of the juvenile court rendered in a proceeding under this chapter to the Court of Appeals or the Supreme Court. The appeal to the superior court shall be made in the same manner as appeals from the probate court to the superior court, except that the appeal shall be heard before the court sitting without a jury as soon as practicable but not later than 30 days following the date on which the appeal is filed with the clerk of the superior court. The appeal from the order of the juvenile court to the Court of Appeals or the Supreme Court shall be as provided by law but

shall be heard as expeditiously as possible. The patient must pay all costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The patient shall retain all rights of review of any order of the superior court, the Court of Appeals, or the Supreme Court, as provided by law. The patient shall have a right to counsel or, if unable to afford counsel, shall have counsel appointed for the patient by the court. The appeal rights provided to the patient, the patient's representatives, or the patient's attorney in this Code section are in addition to any other appeal rights which the parties may have, and the provision of the right for the patient, the patient's representatives, or the patient's attorney to appeal does not deny the right to the Department of Behavioral Health and Developmental Disabilities to appeal under the general appeal provisions of Code Sections 5-3-2 and 5-3-3. (Code 1933, § 88-402.19, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1986, p. 982, § 13; Ga. L. 1994, p. 1072, § 5; Ga. L. 1995, p. 10, § 37; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2016, p. 883, §§ 3-13, 3-14/HB 927.)

The 2016 amendment, effective January 1, 2017, substituted "Court of Appeals or the Supreme Court" for "Court of Appeals and the Supreme Court" twice and substituted "Court of Appeals, or the Supreme Court" for "Court of Appeals, and the Supreme Court" in the fifth sentence. See the Editor's notes for applicability.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Part 2

Rights and Privileges as to Manner of Care and Treatment and as to Maintenance and Release of Clinical Records

Cross references. — Disclosure of medical records, § 24-12-11 et seq.

37-7-167. Right of patient to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.

Cross references. — Release of medical information generally, § 24-12-1 et seq.

37-7-168. Right of patient's attorney to interview physician or psychologist and staff attending patient; establishment of regulations as to release of information to patient's attorney.

Cross references. — Release of medical information generally, § 24-12-1 et seq.

TITLE 38

MILITARY, EMERGENCY MANAGEMENT, AND VETERANS AFFAIRS

Chap.

2. Military Affairs, 38-2-1 through 38-2-1145.

3. Emergency Management, 38-3-1 through 38-3-191.

4. Veterans Affairs, 38-4-1 through 38-4-72.

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38-2-1093. Cruelty and maltreatment of others under one's command.
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ARTICLE 1

STATE MILITIA GENERALLY

Cross references. — Gold Star license plates, § 40-2-85.3.

PART 3

STATE DEFENSE FORCE

38-2-54. Duties, privileges, and immunities.

All duties imposed by the military law or other statutes of the state or by regulations issued thereunder upon units, commissioned officers, warrant officers, and enlisted personnel of the organized militia are imposed upon the units, commissioned officers, warrant officers, and enlisted personnel, respectively, of the State Defense Force. All rights, privileges, and immunities conferred by the military law or other

statutes of the state or by regulations issued thereunder upon the units, commissioned officers, warrant officers, and enlisted personnel of the Georgia National Guard or of the organized militia are conferred upon the units, commissioned officers, warrant officers, and enlisted personnel, respectively, of the State Defense Force except as otherwise prescribed in this chapter. Such rights, privileges, and immunities include relief from civil or criminal liability for acts done while on duty; rights to pay, allowances, and other compensation; expenses and subsistence; arms, uniforms, and equipment; provision, maintenance, use, and control of armories; eligibility to appointment on the military staff of the Governor; exemption from civil process and from jury duty; right of way; right to wear the uniform and to parade with firearms; and all other rights, privileges, and immunities created by statute or custom not hereinbefore specifically enumerated. (Ga. L. 1951, p. 311, §§ 34, 38, 39, 42; Ga. L. 1955, p. 10, § 59; Ga. L. 1985, p. 356, § 8; Ga. L. 2002, p. 1160, § 1; Ga. L. 2015, p. 287, § 1/SB 69.)

The 2015 amendment, effective July 1, 2015, deleted "; provided, however, that the provisions of Code Sections 38-2-279 and 38-2-280 shall not be applicable to personnel of the State Defense Force" from the end of the second sentence.

RESEARCH REFERENCES

ALR. — Construction and application of 37 U.S.C.A. § 206, providing compensation for military reserves and members of National Guard with respect to inactive-duty training, 73 A.L.R. Fed. 2d 27.

38-2-55. Use and operation of state property.

RESEARCH REFERENCES

ALR. — Construction and application of 37 U.S.C.A. § 206, providing compensation for military reserves and members of National Guard with respect to inactive-duty training, 73 A.L.R. Fed. 2d 27.

ARTICLE 3

PERSONNEL

PART 4

RIGHTS, PRIVILEGES, AND PROHIBITIONS

38-2-280. Reemployment in private industry; various types of absences; injunction to compel; Attorney General's aid.

(a) In the case of any person who has left or leaves a position, other than a temporary position, in the employ of any employer in order to perform military service and who:

(1) Received a certificate of completion of military service duly executed by an officer of the applicable force of the armed forces of the United States or by an officer of the applicable force of the organized militia;

(2) Is still qualified to perform the duties of the position; and

(3) Makes application for reemployment within 90 days after he or she is relieved from such service, if the position was in the employ of a private employer,

the employer shall restore the person to the position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

(b) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who, in order to participate in assemblies or annual training pursuant to Code Section 38-2-25 or in order to attend service schools conducted by the armed forces of the United States for a period or periods up to and including six months, temporarily leaves or has left his or her position, other than a temporary position, in the employ of any employer and who, being qualified to perform the duties of the position, makes application for reemployment within ten days after completion of the temporary period of service; provided, however, that no such person shall be entitled to the benefits, rights, and privileges for the attendance at any service school or schools exceeding a total of six months during any four-year period.

(c) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who is or becomes a member of the organized militia or of a reserve component of the armed forces of the United States and who because of such membership is discharged by his or her employer or whose employment is suspended by his or her employer because of such membership and who, being qualified to perform the duties of the position, makes application for reemployment or termination of the period of his or her suspension within ten days after such discharge or suspension. In the event that the member of the organized militia or reserve component is serving on military duty at the time of receipt of notice of the discharge or suspension the aforesaid ten-day period within which application must be made shall not commence to run until the day next following the date of termination of such military duty.

(d) The benefits, rights, and privileges granted to persons in the military service by this Code section shall be extended to and be applicable to any person who is a member of the Georgia National Guard and who is called into active state service by the

commander-in-chief of such force for a purpose identified in subsection (a) or (b) of Code Section 38-2-6 or Code Section 38-2-6.1 or who has been called to state sponsored active duty as part of the National Guard of another state by that state's Governor, and who because of such active state service is discharged by his or her employer or whose employment is suspended by his or her employer because of such active state service and who, being qualified to perform the duties of the position, makes application for reemployment or termination of the period of his or her suspension within ten days after such discharge or suspension. In the event that the member of the Georgia National Guard or a member of any other reserve component of the armed forces of the United States is serving in active state service at the time of receipt of notice of the discharge or suspension the aforesaid ten-day period within which application must be made shall not commence to run until the day next following the date of termination of such active state service.

(e) Any person who is restored to a position in accordance with this Code section shall be considered as having been on furlough, on leave of absence during his or her period of military service, performing temporary service under subsection (b), or discharged or suspended under subsection (c) or (d) of this Code section, shall be restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time the person entered the military service or commenced the temporary service or was so discharged or suspended, and shall not be discharged from the position without cause within one year after the restoration.

(f) If any private employer fails or refuses to comply with this Code section, the superior court of the county in which the private employer resides shall have the power, upon petition by the person entitled to the benefits of this Code section, to require specifically the employer, by injunction, mandatory or otherwise, to comply with this Code section, and may, as an incident thereto, compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order a speedy hearing in any such case and may specially set it on the calendar. Any person claiming to be entitled to the benefits of this Code section may appear by his or her own counsel or, upon application to the Attorney General of the state, may request that the Attorney General appear and act on his or her behalf. If the Attorney General is reasonably satisfied that the person so applying is entitled to such benefits, he or she shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any petition and the prosecution thereof. In the hearing and determination of petitions under this Code section no fees or court costs shall be

assessed against a person so applying for such benefits. (Ga. L. 1955, p. 10, § 87; Ga. L. 1959, p. 114, §§ 8, 9; Ga. L. 1995, p. 730, § 1; Ga. L. 2016, p. 430, § 2/HB 831; Ga. L. 2017, p. 774, § 38/HB 323.)

The 2016 amendment, effective July 1, 2016, in subsection (d), substituted "service by the commander-in-chief of such force for a purpose identified in subsection (a) or (b) of Code Section 38-2-6 or Code Section 38-2-6.1 or who has been called to state-sponsored active duty as part of the National Guard of another state by that state's Governor," for "service pursuant to Code Section 38-2-6 or 38-2-6.1" in the first sentence and inserted "or a member of any other reserve component of the armed forces of the United States" in the second sentence.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence of subsection (d).

Cross references. — Priority of service designation for veterans and spouses, § 34-14-6.

Editor's notes. — Ga. L. 2016, p. 430, § 1/HB 831, not codified by the General Assembly, provides: "This Act shall be known and cited as the 'Protecting Guardsmen's Employment Act.'"

ARTICLE 5

CODE OF MILITARY JUSTICE

Effective date. — This article became effective July 1, 2015. See Editor's notes for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2015, the amendment to Code Section 38-2-464 by Ga. L. 2015, p. 693, § 3-32/HB 233, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 753, § 1/HB 98, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Editor's notes. — Ga. L. 2015, p. 753, § 1/HB 98, effective July 1, 2015, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 38-2-320 through 38-2-326, 38-2-340 through 38-2-347, 38-2-360, 38-2-370 through 38-2-376, 38-2-390 through 38-2-397, 38-2-410 through 38-2-415, 38-2-430 through 38-2-449, 38-2-460 through 38-2-464, 38-2-480 through 38-2-493, 38-2-510 through 38-2-553, and 38-2-570 through 38-2-577, relating to the Georgia Code of Military Justice, and was based on Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1201—86-1204; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, §§ 60.1—60.116, 61.1—61.12; Ga. L. 1959, p. 114, §§ 2-6; Ga. L. 1982, p. 3, § 38; Ga. L. 1985, p. 356, §§ 9, 10; Ga. L. 1996, p. 740, § 3.

Ga. L. 2015, p. 753, § 4/HB 98, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2015, shall be governed by the statutes in effect at the time of such offense. The enactment of this Act shall not affect any prosecutions for acts occurring before July 1, 2015, and shall not act as an abatement of any such prosecutions."

PART 1

GENERAL PROVISIONS

38-2-1000. Short title.

This article shall be known and may be cited as the "Georgia Code of Military Justice." (Code 1981, § 38-2-1000, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1001. Definitions.

As used in this article, the term:

(1) "Accuser" means a person who signs and swears to charges, directs that charges nominally be signed and sworn to by another, or has an interest other than an official interest in the prosecution of the accused.

(2) "Another state" means any one of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.

(3) "Apprehension" means the taking of a person into custody.

(4) "Arrest" means the restraint of a person by oral or written order that is not imposed as punishment and that directs such person to remain within specified limits.

(5) "Arrest in quarters" means a punishment requiring a person to remain within his or her military residence, whether a tent, state-room, or other quarters assigned, or a private residence when government quarters have not been provided during the period of punishment.

(6) "Cadet," "candidate," or "midshipman" means a person enrolled in or attending a military academy, regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the organized militia.

(7) "Classified information" means any information or material that has been determined by an official of the United States or of another state, pursuant to law, an executive order, or regulation, to require protection against unauthorized disclosure for reasons of national or state security.

(8) "Commander" means:

(A) A commissioned officer of the organized militia who is in command or who is in charge;

(B) The Governor; or

(C) The adjutant general.

(9) "Commanding officer" means a commander.

(10) "Confinement" means physical restraint imposed by order of competent authority depriving a person of freedom.

(11) "Convening authority" means the person convening the court, a successor in office, or an authorized designee of the person or successor.

(12) "Enlisted member" means a person in an enlisted grade.

(13) "Judge advocate" means an individual who is certified or designated as such by the Judge Advocate General of the United States Army or Air Force or certified by the state judge advocate as competent to perform such military justice duties required by this article. Such individual shall be a commissioned officer of the organized militia.

(14) "Military court" means a court-martial or court of inquiry.

(15) "Military judge" means an official of a general or special court-martial detailed by the convening authority.

(16) "Organized militia" means the National Guard of this state as provided for by Title 32 of the United States Code, the Georgia Naval Militia, and any other military force organized under the Constitution and laws of this state when not in a status subjecting such force or forces to exclusive jurisdiction under Chapter 47 of Title 10 of the United States Code.

(17) "Record," when used in connection with the proceedings of a court-martial, means:

(A) An official written transcript, written summary, or other writing relating to the proceedings; or

(B) An official audiotape, videotape, digital image or file, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(18) "Senior force commander" means the assistant adjutant general for army, the assistant adjutant general for air, or the brigadier general in charge of the State Defense Force.

(19) "Superior commissioned officer" means a commissioned officer superior in rank or command. (Code 1981, § 38-2-1001, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2016, p. 864, § 38/HB 737.)

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised capitalization in paragraph (16).

38-2-1002. Applicability; jurisdiction.

(a) This article shall apply to all members of the organized militia at all times and in all places when not serving as provided for by Title 10 of the United States Code.

(b)(1) Subject matter jurisdiction under this article shall be established if a nexus exists between an offense set forth in Part 10 of this article, except as provided in Code Section 38-2-1111 or 38-2-1112.1, and the organized militia. When a member is in a status as provided for by Title 32 of the United States Code or on state active duty, a rebuttable presumption exists that such nexus is established. As used in this paragraph, the term "state active duty" means full-time duty in the organized militia under an order of the Governor or otherwise issued by authority of law and paid by funds of this state, including travel to and from such duty.

(2) Courts-martial shall have primary jurisdiction of an offense set forth in Part 10 of this article, except as provided in Code Section 38-2-1111 or 38-2-1112.1.

(3) A proper civilian court shall have primary jurisdiction of a nonmilitary offense when such act or omission violates both this article and local civilian criminal law, foreign or domestic. In such case, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed such charge; provided, however, that jeopardy has not attached.

(4) Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes shall be determined by the underlying offense. (Code 1981, § 38-2-1002, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1003. Discharge fraudulently obtained.

(a) Each person discharged from the organized militia who is later charged with having fraudulently obtained such discharge shall be, subject to Code Section 38-2-1043, subject to trial by court-martial on that charge and is, after apprehension, subject to this article while in custody under the direction of the organized militia for that trial. Upon conviction of such charge, such person shall be subject to trial by court-martial for all offenses under this article committed prior to the fraudulent discharge.

(b) No person who has deserted from the organized militia shall be relieved from amenability to the jurisdiction of this article by virtue of

a separation from any later period of service. (Code 1981, § 38-2-1003, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1004. Calculating forfeiture punishments.

When calculating forfeiture punishments under this article for nonactive duty members of the Georgia National Guard, each unit training assembly shall constitute a day. Otherwise, any punishment authorized by this article which is measured in terms of days shall mean successive days when served in a status of annual field training and shall mean succeeding duty days when served in a status other than annual field training. (Code 1981, § 38-2-1004, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1005. Territorial applicability of article.

(a) This article shall be applicable at all times and in all places, provided that either the person subject to this article is in a duty status or, if not in a duty status, that there is a nexus between the act or omission constituting an offense under this article and the efficient functioning of the organized militia. Such grant of military jurisdiction shall neither preclude nor limit civilian jurisdiction over an offense except when the prohibition of double jeopardy is concerned.

(b) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while those units are serving outside of this state with the same jurisdiction and powers as to persons subject to this article as if such proceedings were held inside this state, and offenses committed outside this state may be tried and punished under this article either inside or outside this state. (Code 1981, § 38-2-1005, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1006. State judge advocate; appointment; eligibility; staff judge advocate.

(a) The Governor, on the recommendation of the adjutant general, shall appoint an individual to serve as the state judge advocate. To be eligible for such appointment, such individual shall be a judge advocate, a member of the State Bar of Georgia in good standing for not less than ten years, and have not less than five years of continuous service in the army or air National Guard of this state. The state judge advocate shall serve as the primary legal adviser to the adjutant general and shall serve as the judge advocate on the joint staff. The state judge advocate shall supervise the Office of the State Judge Advocate and shall have authority for assignment, placement, and billeting of all judge advocates.

(b) The assistant adjutant general for army, the assistant adjutant general for air, and the brigadier general in charge of the State Defense Force, on the recommendation of the state judge advocate, shall each appoint a staff judge advocate for the Army National Guard, a staff judge advocate for the Air National Guard, and a staff judge advocate for the State Defense Force, respectively. Such staff judge advocates shall serve as the respective primary legal advisers to the assistant adjutant general for army, the assistant adjutant general for air, and the brigadier general in charge of the State Defense Force.

(c) The state judge advocate, or his or her assistants, shall make frequent inspections in the field in supervision of the administration of military justice in the organized militia.

(d) Convening authorities shall at all times communicate directly with a judge advocate in the same military service in matters relating to the administration of military justice.

(e) No person who has acted as member, military judge, trial counsel, defense counsel, or investigating officer, or who has been a witness, in any case may later act in any capacity in any reviewing authority upon the same case. (Code 1981, § 38-2-1006, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2017, p. 774, § 38/HB 323.)

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised language in subsections (a) and (b).

Part 2

Apprehension and Restraint

38-2-1007. Apprehension.

(a) Any person authorized by this article or Chapter 47 of Title 10 of the United States Code, or by regulations issued under either, to take persons into custody subject to this article, any marshal of a court-martial appointed pursuant to the provisions of this article, and any peace officer or civil officer having authority to take offenders into custody under the laws of the United States or of another state, may do so upon probable cause that an offense has been committed and that the person taken into custody committed it.

(b) Commissioned officers, warrant officers, petty officers, and noncommissioned officers shall have authority to quell quarrels, frays, and disorders among persons subject to this article and to take persons into custody subject to this article who take part therein.

(c) If an offender is taken into custody outside this state, the offender's return to this state shall be in accordance with normal extradition procedures or by reciprocal agreement.

(d) No person authorized by this article to take persons into custody subject to this article, or the place where such offender is confined, restrained, held, or otherwise housed, shall require payment of any fee or charge for so receiving, apprehending, confining, restraining, holding, or otherwise housing a person except as otherwise provided by law. (Code 1981, § 38-2-1007, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1008. Reserved.

Reserved. (Code 1981, § 38-2-1008, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1009. Who may order the arrest or confinement of members.

(a) An enlisted member may be ordered into arrest or confinement by any commander in the grade of O-4 or above by an order, oral or written, delivered in person or through any other person who is subject to this article. A commander in the grade of O-4 or above may authorize commissioned officers, warrant officers, petty officers, or noncommissioned officers to order enlisted members of the commanding officer's command, or subject to the commanding officer's authority, into arrest or confinement.

(b) A commissioned officer, a warrant officer, or a civilian subject to this article or to trial thereunder may be ordered into arrest or confinement only by a commanding officer in the grade of O-6 or above to whose authority the person is subject by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement shall not be delegated.

(c) No person may be ordered into arrest or confinement except for probable cause.

(d) This article shall not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(e) The Governor, or the adjutant general under delegation by the Governor, may by written order, or regulations issued pursuant to Part 1 of Article 2 of this chapter, further limit who may order the arrest or confinement of members. (Code 1981, § 38-2-1009, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1010. Restraint of persons charged with offenses.

Any person subject to this article who is charged with an offense under this article shall be ordered into arrest or confinement by the

adjutant general, as circumstances may require. When any person subject to this article is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him or her of the specific wrong of which he or she is accused, and diligent steps shall be taken to try him or her or to dismiss the charges and release him or her. (Code 1981, § 38-2-1010, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1011. Confinement and imprisonment in civil jails.

Confinement and imprisonment other than in a guard house, whether prior to, during, or after trial by a military court, shall be executed in jails or correctional institutions designated by the Governor, or by the adjutant general under delegation by the Governor, for that purpose. (Code 1981, § 38-2-1011, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1012. No confinement with enemy prisoners.

No member of the organized militia shall be placed in confinement in immediate association with enemy prisoners. (Code 1981, § 38-2-1012, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1013. Restriction on means of punishment.

No person, while being held for trial or awaiting a verdict, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him or her, nor shall the arrest or confinement imposed upon such person be any more rigorous than the circumstances require to insure his or her presence and the safety of others, but he or she may be subjected to minor punishment during such period for infractions of discipline. Any person placed in confinement while being held for trial or awaiting a verdict shall be given administrative credit for such time to offset any sentence subsequently imposed. (Code 1981, § 38-2-1013, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1014. Delivery of offenders to civil authorities.

(a) A person who is subject to this article and accused of an offense against civil authority shall be delivered, upon request, to the civil authority for trial or confinement.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, and the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, the offender, after having answered to the

civil authorities for the offense, shall, upon the request of competent military authority, be returned to the place of original custody for the completion of his or her sentence. (Code 1981, § 38-2-1014, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Part 3

Nonjudicial Punishment

38-2-1015. Commanding officer's disciplinary punishment; regulations limiting; officers in charge; appeal; effect on more serious offenses.

(a) Under such regulations as may be prescribed by the Governor pursuant to Part 1 of Article 2 of this chapter, or the adjutant general under delegation by the Governor, any commanding officer may impose disciplinary punishments for minor offenses without the intervention of a court-martial pursuant to this Code section. A commanding officer's authority under this Code section shall not be delegated.

(b) As provided for by subsection (a) of this Code section, any commanding officer may impose upon enlisted members of such commanding officer's command one or more of the following punishments:

(1) An admonition;

(2) A reprimand;

(3) The withholding of privileges for not more than six months, whether or not such withholding is for consecutive months;

(4) Restitution;

(5) The forfeiture of pay of not more than seven days' pay;

(6) A reduction by one grade of a member in the grade of E-4 and below;

(7) Extra duties, including, but not limited to, fatigue duties, for not more than 14 days, whether or not such days are consecutive; and

(8) Restriction to certain specified limits, with or without suspension from duty, for not more than 14 days, whether or not such days are consecutive.

(c) As provided for by subsection (a) of this Code section, any commanding officer in the grade of O-4 or above may impose upon enlisted members of such commanding officer's command one or more of the following punishments:

(1) Any punishment authorized in paragraphs (1) through (4) of subsection (b) of this Code section;

(2) The forfeiture of not more than one-half of one month's pay per month for two months;

(3) A reduction by one grade of a member in the grade of E-6 and below;

(4) Extra duties, including, but not limited to, fatigue duties, for not more than 45 days, whether or not such days are consecutive; and

(5) Restriction to certain specified limits, with or without suspension from duty, for not more than 60 days, whether or not such days are consecutive.

(d) As provided for by subsection (a) of this Code section, any commanding officer in the grade of O-6 or above may impose upon enlisted members of such commanding officer's command one or more of the following punishments:

(1) Any punishment authorized in paragraphs (1), (2), (4), and (5) of subsection (c) of this Code section; and

(2) A reduction by one grade of a member in the grade of E-7 and below.

(e) As provided for by subsection (a) of this Code section, the adjutant general or an officer of a general or flag rank in command may impose one or more of the following punishments:

(1) Upon commissioned or warrant officers under the command of the adjutant general or officers of a general or flag rank command:

(A) Any punishment authorized in paragraphs (1), (2), and (5) of subsection (c) of this Code section; and

(B) Arrest in quarters for not more than 30 days, whether or not such days are consecutive; and

(2) Upon enlisted members under the command of the adjutant general or officers of a general or flag rank command:

(A) Any punishment authorized in paragraph (1) of subsection (d) of this Code section; and

(B) A reduction by one grade.

(f) Whenever any of the punishments provided for by this Code section are combined to run consecutively, the total length of the combined punishment shall not exceed the authorized duration of the longest punishment in the combination, and there shall be an apportionment of punishments such that no single punishment in the combination exceeds its authorized length under this Code section.

(g)(1) The officer who imposes punishment under this Code section, or such officer's successor in command, may, at any time, suspend, set

aside, mitigate, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. Such officer may also:

(A) Mitigate reduction in grade to forfeiture of pay;

(B) Mitigate arrest in quarters to restriction; or

(C) Mitigate extra duties to restriction.

(2) The mitigated punishment under this subsection shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this Code section by the officer who imposed the punishment mitigated.

(h) A person punished under this Code section who considers the punishment unjust or disproportionate to the offense may through the proper channel appeal to the next superior authority within 30 days after the punishment is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority shall exercise the same powers with respect to the punishment imposed as may be exercised under subsection (g) of this Code section by the officer who imposed the punishment. Before acting on an appeal from a punishment, the authority who is to act on the appeal may refer the case to a judge advocate for consideration and advice.

(i) The imposition and enforcement of disciplinary punishment under this Code section for any act or omission shall not be a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this Code section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(j) Whenever a punishment of forfeiture of pay is imposed under this Code section, the forfeiture may apply to pay accruing before, on, or after the date that punishment is imposed.

(k) Regulations issued pursuant to Part 1 of Article 2 of this chapter may prescribe the form of records to be kept of proceedings under this Code section and may prescribe that certain categories of those proceedings shall be in writing.

(l) No member has the right to decline nonjudicial punishment under this Code section and to demand any type of court-martial. (Code 1981,

§ 38-2-1015, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2016, p. 864, § 38/HB 737.)

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (b)(5).

Part 4

Classification of Courts-Martial

38-2-1016. Classification of courts-martial.

There shall be three kinds of courts-martial in the organized militia:

(1) General courts-martial, which shall consist of:

(A) A military judge and not less than six members; or

(B) Only a military judge, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed of only a military judge and the military judge approves;

(2) Special courts-martial, which shall consist of:

(A) A military judge and not less than six members; or

(B) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those provided for in subparagraph (B) of paragraph (1) of this Code section so requests; and

(3) Summary courts-martial, consisting of one commissioned officer. (Code 1981, § 38-2-1016, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1017. Jurisdiction of courts-martial; generally.

Each force of the organized militia has court-martial jurisdiction over all members of the particular force of the organized militia who are subject to this article. The Georgia Army National Guard and the Georgia Air National Guard shall have court-martial jurisdiction over all members subject to this article. (Code 1981, § 38-2-1017, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1018. General courts-martial.

Subject to Code Section 38-2-1017, general courts-martial shall have jurisdiction to try persons subject to this article for any offense made

punishable by this article, and shall, under such limitations as the Governor may prescribe pursuant to Part 1 of Article 2 of this chapter, adjudge any one or more of the following punishments not otherwise forbidden by this article:

(1) Confinement for a period of not more than ten years;

(2) Restriction to specified limits for not more than six months;

(3) Dismissal, dishonorable discharge, or bad conduct discharge;

(4) Forfeiture of all or a portion of pay and allowances;

(5) Restitution;

(6) Reduction to the lowest or any intermediate pay grade of enlisted persons;

(7) A reprimand; and

(8) No punishment. (Code 1981, § 38-2-1018, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1019. Special courts-martial.

Subject to Code Section 38-2-1017, special courts-martial shall have jurisdiction to try persons subject to this article for any offense made punishable by this article, and shall, under such limitations as the Governor, or the adjutant general by delegation of the Governor, may prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter, adjudge any one or more of the following punishments not otherwise forbidden by this article:

(1) Confinement for a period of not more than one year;

(2) Restriction to specified limits for not more than six months;

(3) Bad conduct discharge;

(4) Forfeiture of all or a portion of pay and allowances for not more than one year;

(5) Restitution;

(6) Reduction to the lowest or any intermediate pay grade of enlisted persons;

(7) A reprimand; and

(8) No punishment. (Code 1981, § 38-2-1019, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1020. Summary courts-martial.

(a) Subject to Code Section 38-2-1017, summary courts-martial shall have jurisdiction to try persons subject to this article, except for commissioned or warrant officers, cadets, candidates, and midshipmen, for any offense made punishable by this article under such limitations as the Governor, or the adjutant general by delegation of the Governor, may prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter.

(b) No person with respect to whom summary courts-martial shall have jurisdiction may be brought to trial before a summary court-martial if he or she objects thereto. If objection to trial by summary court-martial is made by an accused, trial by special or general court-martial shall be ordered, as may be appropriate. Summary courts-martial shall, under such limitations as the Governor, or the adjutant general by delegation of the Governor, may prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter, adjudge any one or more of the following punishments not otherwise forbidden by this article:

(1) Confinement for a period of not more than one month;

(2) Restriction to specified limits for not more than two months;

(3) Forfeiture of all or a portion of pay and allowances for not more than 60 days;

(4) Restitution;

(5) Reduction of no more than two grades of enlisted persons;

(6) A reprimand; and

(7) No punishment. (Code 1981, § 38-2-1020, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1021. Reserved.

Reserved. (Code 1981, § 38-2-1021, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Part 5

Convening of Courts-Martial

38-2-1022. Convening of general courts-martial.

(a) General courts-martial may be convened by the Governor. The Governor may delegate the authority to convene general courts-martial

to the adjutant general, but such authority shall not be delegated further.

(b) If the Governor is the accuser, the general court-martial shall be convened by the Lieutenant Governor.

(c) For administrative purposes other than the actual convening of a general court-martial, the adjutant general shall be considered the general court-martial convening authority. (Code 1981, § 38-2-1022, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1023. Convening of special courts-martial.

(a) Special courts-martial may be convened by the Governor, the adjutant general, the assistant adjutant general for army, or the assistant adjutant general for air.

(b) If any individual in subsection (a) of this Code section is an accuser, the special court-martial shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority. (Code 1981, § 38-2-1023, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1024. Convening of summary courts-martial.

(a) Summary courts-martial may be convened by:

(1) Any person authorized to convene a special court-martial under subsection (a) of Code Section 38-2-1023; or

(2) Any commander in the grade of O-6 or above.

(b) If any individual listed in subsection (a) of this Code section is an accuser, the summary court-martial shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority.

(c) The Governor, or the adjutant general by delegation of the Governor, may, by written order, further limit who may convene actions under this Code section. (Code 1981, § 38-2-1024, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1025. Eligibility to serve on courts-martial.

(a) For purposes of this Code section, the term "unit" means any regularly organized body of the organized militia not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

(b) Any commissioned officer of the organized militia shall be eligible to serve on all courts-martial for the trial of any person who is subject to this article.

(c) Any warrant officer of the organized militia shall be eligible to serve on general and special courts-martial for the trial of any person who is subject to this article, other than a commissioned officer.

(d) Any enlisted member of the organized militia who is not a member of the same unit as the accused shall be eligible to serve on general and special courts-martial for the trial of any enlisted member who is subject to this article, but such enlisted member shall serve as a member of a court only if, before the conclusion of a session called by the military judge under Code Section 38-2-1039 prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court shall be assembled and the trial held without such enlisted members, but the convening authority shall make a detailed written statement, to be appended to the record, stating why such number of enlisted members could not be obtained.

(e) No person who is subject to this article shall be tried by a court-martial any member of which is junior to the accused in rank or grade.

(f) When convening a court-martial, the convening authority shall detail as members thereof such members of the organized militia as, in the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the organized militia shall be eligible to serve as a member of a general or special court-martial when that member is the accuser, a witness, or has acted as investigating officer or as counsel in the same case.

(g) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. The convening authority may delegate the authority under this subsection to a judge advocate or to any other principal assistant. (Code 1981, § 38-2-1025, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1026. Military judge.

(a) A military judge shall be detailed to each general and special court-martial by the authority convening a general or special court-martial. The military judge shall preside over each open session of the court-martial to which the military judge has been detailed.

(b) A military judge shall be:

(1) An active or retired commissioned officer of the organized militia or state military force of another state or of the armed forces of the United States or a reserve component thereof;

(2) A member in good standing of the bar of the highest court of another state or a member of the bar of a federal court for at least five years; and

(3) Certified as qualified for duty as a military judge by the judge advocate general of the army, air force, or navy and the state judge advocate.

(c) In the instance when a military judge is not a member of the bar of the highest court of this state, the military judge shall be deemed admitted pro hac vice, subject to filing a certificate with the state judge advocate setting forth such qualifications as provided for in subsection (b) of this Code section.

(d) The military judge of a general or special court-martial shall be designated by the state judge advocate, or a designee, for detail by the convening authority. Neither the convening authority nor any primary staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge.

(e) Whenever possible, the military judge of a general or special court-martial shall be of the same branch of service as the accused.

(f) No person shall be eligible to act as military judge in a case if that person is the accuser or a witness or has acted as investigating officer or a counsel in the same case.

(g) The military judge of a court-martial shall not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel and shall not vote with the members of the court.

(h) If no person who meets the qualifications to serve as military judge under this Code section is readily available in the sole discretion of the state judge advocate, a law officer shall be appointed. A law officer may serve in place of a military judge provided he or she meets the

qualifications as provided for in paragraphs (1) and (2) of subsection (b) of this Code section and is approved for such service, in writing, by the state judge advocate. (Code 1981, § 38-2-1026, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, a period was added at the end of paragraph (b)(3).

38-2-1027. Trial counsel and assistants.

(a)(1) For each general and special court-martial the convening authority shall detail a trial counsel and such assistants as appropriate.

(2) For each general and special court-martial, if the United States Army Trial Defense Services or a similar entity exists, such entity shall detail defense counsel and such assistants as are appropriate. If no appropriate such entity exists, the convening authority shall detail defense counsel and such assistants as are appropriate.

(3) No person who has acted as investigating officer, military judge, a witness, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Except as provided in subsection (c) of this Code section, trial counsel or defense counsel detailed for a general or special court-martial shall be a judge advocate.

(c) In the instance where a defense counsel is not a member of the bar of the highest court of this state, the defense counsel shall be deemed admitted pro hac vice, subject to filing a certificate with the military judge setting forth the qualifications that counsel is:

(1) A commissioned officer of the organized militia or state military force of another state or of the armed forces of the United States or a reserve component thereof;

(2) A member in good standing of the bar of the highest court of another state; and

(3) Certified as a judge advocate in the judge advocate general's corps of the army, air force, navy, or the marine corps.

(d) Nothing in this Code section shall preclude the accused from hiring a civilian attorney who is a member of the bar of this state or who has been admitted pro hac vice. Such attorney shall serve the accused

at no cost to another state or the federal government. (Code 1981, § 38-2-1027, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1028. Appointment of court reporters and interpreters.

Under such regulations as may be prescribed by the Governor pursuant to Part 1 of Article 2 of this chapter, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court. Under like regulations, the convening authority may detail or employ interpreters who shall interpret for the court. (Code 1981, § 38-2-1028, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1029. Absent and additional members; not less than six members required; disability of judge.

(a) No member of a general or special court-martial shall be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below six members, the trial shall not proceed unless the convening authority details new members sufficient in number to provide not less than six members. The trial shall proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below six members, the trial shall not proceed unless the convening authority details new members sufficient in number to provide not less than six members. The trial shall proceed with the new members present as if no evidence had been introduced previously at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of subparagraph (B) of paragraphs (1) and (2) of Code Section 38-2-1016, after the detail of

a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides. (Code 1981, § 38-2-1029, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Part 6

Pretrial Procedure

38-2-1030. Charges and specification.

(a) Charges and specifications shall be signed by a person subject to this article under oath before a commissioned officer authorized by Code Section 38-2-1136 to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That the same are true in fact to the best of the signer's knowledge and belief.

(b) Upon the preferring of charges, the convening authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges as soon as practicable.

(c) The preferring of charges and findings and sentence of a general court-martial or special court-martial, or other disposition of the charges of the general court-martial or special court-martial, shall be reported to the Georgia Crime Information Center. The Governor shall prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter the means, manner, and methods of such reporting to the Georgia Crime Information Center. (Code 1981, § 38-2-1030, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1031. Compulsory self-incrimination prohibited.

(a) No person subject to this article shall compel any person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate him or her.

(b) No person subject to this article shall interrogate or request any statement from an accused or a person suspected of an offense without first informing him or her of the nature of the accusation and advising him or her that he or she does not have to make any statement regarding the offense of which he or she is accused or suspected and that any statement made by him or her may be used as evidence against him or her in a trial by court-martial.

(c) No person subject to this article shall compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade him or her.

(d) No statement obtained from any person in violation of this article or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him or her in a trial by court-martial. (Code 1981, § 38-2-1031, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1032. Investigation; cross-examination; effect of failure to perform.

(a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made unless such investigation has been waived in writing by the accused after consultation with his or her defense counsel. Such investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him or her and of the right to be represented at the investigation provided for by subsection (a) of this Code section by counsel. The accused has the right to be represented at such investigation as provided in Code Section 38-2-1038 and in regulations prescribed under that Code section. At such investigation, full opportunity shall be given to the accused to cross-examine witnesses against him or her, if they are available, and to present anything relevant he or she may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available relevant witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Code section, no further investigation of that charge shall be necessary under this Code section unless it is demanded by the accused after he or she is informed of the charge. A demand for further investigation shall entitle the accused to recall witnesses for further cross-examination and to offer any new relevant evidence in the accused's own behalf.

(d) If evidence adduced in an investigation under this Code section indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused is:

(1) Present at the investigation;

(2) Informed of the nature of each uncharged offense investigated; and

(3) Afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Code section.

(e) The requirements of this Code section shall be binding on all persons administering this article, but failure to follow them shall not constitute jurisdictional error. (Code 1981, § 38-2-1032, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1033. Forwarding of charges.

When a person is held for trial by general court-martial, the commanding officer shall, within three days after the accused is ordered into arrest or confinement, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. (Code 1981, § 38-2-1033, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1034. Advice of staff judge advocate and reference for trial; corrections.

(a) Before directing the trial of any charge by general or special court-martial, the convening authority shall refer it to the staff judge advocate of the service of the accused for consideration and advice. The convening authority shall not refer a specification under a charge to a general or special court-martial for trial unless the convening authority has been advised in writing by the staff judge advocate of the service of the accused that:

(1) The specification alleges an offense under this article;

(2) The specification is warranted by the evidence indicated in the report of investigation as provided for under Code Section 38-2-1032, if there is such a report; and

(3) A court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) of this Code section with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate:

(1) Expressing conclusions with respect to each matter set forth in subsection (a) of this Code section; and

(2) Recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made. (Code 1981, § 38-2-1034, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1035. Service of copy of charges; time period before trial.

The trial counsel shall serve or cause to be served upon the accused a copy of the charges. No person shall, against his or her objection, be brought to trial before a general court-martial case within a period of five days after the service of charges upon him or her, or before a special court-martial case within a period of three days after the service of charges upon him or her. (Code 1981, § 38-2-1035, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Part 7

Trial Procedures

38-2-1036. Governor may prescribe rules and regulations.

Pretrial, trial, and post-trial procedures, including, but not limited to, modes of proof, for courts-martial cases arising under this article and for courts of inquiry shall be prescribed by the Governor, or the adjutant general by delegation of the Governor, by regulations issued pursuant to Part 1 of Article 2 of this chapter, or as otherwise provided by law, which shall apply the principles of law generally recognized in military criminal cases in the courts of the armed forces but which may not be contrary to or inconsistent with this article. (Code 1981, § 38-2-1036, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1037. Unlawfully influencing action of court.

(a) No authority convening a general, special, or summary court-martial nor any other commanding officer or officer serving on the

staff thereof may censure, reprimand, or admonish such court or any member, the military judge, counsel, or witness thereof with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or his or her functions in the conduct of the proceedings. No person subject to this article shall attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member thereof in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to their judicial acts.

(b) Subsection (a) of this Code section shall not apply with respect to:

(1) General instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial; or

(2) Statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.

(c) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the organized militia is qualified to be advanced in grade, of determining the assignment or transfer of a member of the organized militia, or of determining whether a member of the organized militia should be retained on active status, no person subject to this article shall, in preparing any such report:

(1) Consider or evaluate the performance of duty of any such member as a member of a court-martial or witness therein; or

(2) Give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial. (Code 1981, § 38-2-1037, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1038. Trial counsel.

(a) The trial counsel of a general or special court-martial shall be a member in good standing of the State Bar of Georgia and shall prosecute in the name of this state and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused shall have the right to be represented in defense before a general or special court-martial or at an investigation under Code Section 38-2-1032 as provided for in this subsection.

(2) The accused may be represented by civilian counsel at the provision and expense of the accused.

(3) Except as otherwise provided in this Code section, the accused shall be represented by:

(A) Military counsel as provided for under Code Section 38-2-1027; or

(B) Military counsel of the accused's own selection if such counsel is reasonably available as determined under paragraph (7) of this subsection.

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) of this subsection shall act as associate counsel if requested in writing by the accused; provided, however, that if no such request in writing is made, military counsel detailed under paragraph (3) of this subsection shall be excused.

(5) Except as provided under paragraph (6) of this subsection, if the accused is represented by military counsel of his or her own selection under subparagraph (B) of paragraph (3) of this subsection, any military counsel detailed under subparagraph (A) of paragraph (3) of this subsection shall be excused.

(6) The accused shall not be entitled to be represented by more than one military counsel; provided, however, that the person authorized under regulations prescribed under Code Section 38-2-1027 to detail counsel, in such person's sole discretion:

(A) May detail additional military counsel as assistant defense counsel; and

(B) If the accused is represented by military counsel of the accused's own selection under subparagraph (B) of paragraph (3) of this subsection, may approve a request from the accused that military counsel detailed under subparagraph (A) of paragraph (3) of this subsection act as associate defense counsel.

(7) The staff judge advocate of the same force of the accused shall determine whether the military counsel selected by an accused is reasonably available.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel may:

(1) Forward for attachment to the record of proceedings a brief of such matters as counsel determines should be considered in behalf of the accused on review, including any objection to the contents of the record which such counsel considers appropriate;

(2) Assist the accused in the submission of any matter under Code Section 38-2-1060; and

(3) Take other action as authorized by this article. (Code 1981, § 38-2-1038, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2016, p. 864, § 38/HB 737.)

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "subparagraph (B) of paragraph (3) of this subsection" for "subparagraph (b)(3)(B) of this Code section" and substituted "subparagraph (A) of paragraph (3) of this subsection" for "subparagraph (b)(3)(A) of this Code section" in paragraph (b)(5) and subparagraph (b)(6)(B).

38-2-1039. Calling court into session without presence of members; purpose.

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge shall, subject to Code Section 38-2-1035, call the court into session without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this article, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) Holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which does not require the presence of the members of the court under this article.

(b) The proceedings as provided for by subsection (a) of this Code section shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. Such proceedings shall be conducted notwithstanding the number of court members and without regard to Code Section 38-2-1029.

(c) When the members of a court-martial deliberate or vote, only the members shall be present. All other proceedings, including, but not limited to, any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge. (Code 1981, § 38-2-1039, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1040. Granting continuance.

The military judge of a court-martial or a summary court-martial officer may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just. (Code 1981, § 38-2-1040, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1041. Challenges for cause; order of presentation; peremptory challenges.

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, if one, or the court shall determine the relevancy and validity of challenges for cause and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by Code Section 38-2-1016, all parties shall, notwithstanding Code Section 38-2-1029, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court; provided, however, that peremptory challenges shall not be exercised at such time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge shall not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by Code Section 38-2-1016, the parties shall, notwithstanding Code Section 38-2-1029, either exercise or waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.

(3) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge. (Code 1981, § 38-2-1041, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1042. Oaths.

(a) Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation to perform their duties faithfully. The form of such oath or affirmation, the time and place of the taking thereof, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which such duties are to be performed or for a particular case, shall be as prescribed in regulations issued pursuant to Part 1 of Article 2 of this chapter or as provided by law. Such regulations shall provide that an

oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if such an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined under oath or affirmation. (Code 1981, § 38-2-1042, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1043. Statute of limitations.

(a) A person charged with desertion or absence without leave in time of armed conflict or war, whether or not declared, or with aiding the enemy or with mutiny shall be tried and punished at any time without limitation.

(b) Except as otherwise provided in this article, a person charged with any offense shall not be liable to be tried by court-martial or punished under Code Section 38-2-1015 if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command or before the imposition of punishment under Code Section 38-2-1015.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this Code section.

(d) Periods in which the accused was absent from territory in which this state has the authority to take the accused into custody, or in which such accused is in the custody of civil authorities or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Code section.

(e)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period of limitation prescribed by this Code section has expired or will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications shall not be barred by the period of limitation prescribed by this Code section if the conditions specified in paragraph (2) of this subsection are met.

(2) The conditions provided for by paragraph (1) of this subsection shall be that the new charges and specifications shall:

(A) Be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) Allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications. (Code 1981, § 38-2-1043, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1044. Double jeopardy.

(a) No person shall, without his or her consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be a trial in the sense of this Code section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused shall be a trial in the sense of this Code section. (Code 1981, § 38-2-1044, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1045. Pleas of accused.

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. Such finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event, the proceedings shall continue as though the accused had pleaded not guilty. (Code 1981, § 38-2-1045, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1046. Opportunity to obtain witnesses and other evidence.

The trial counsel, the defense counsel, and the summary court-martial officer shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations issued pursuant to Part

1 of Article 2 of this chapter. (Code 1981, § 38-2-1046, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1046.1. Issuance of process and mandates; who may issue; execution.

(a) Military courts are empowered to issue all process and mandates necessary and proper to carry into full effect the powers vested in the courts. The courts shall have power to issue subpoenas for the attendance of witnesses and subpoenas for the production of documentary evidence and to enforce by attachment attendance of witnesses and production of books, records, and other documentary evidence.

(b) Such process and mandates may be issued by military judges, summary courts-martial, provost courts, the president of other military courts, and boards of officers; may be directed to and may be executed by any sheriff, the marshals of the military court, or any peace officer; and shall be in such form as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter.

(c) It shall be the duty of all officers to whom process or mandate may be so directed to execute the same and make return of their acts thereunder according to the requirements of the same. Except as otherwise specifically provided in this article, no such officer shall demand or require payment of any fee or charge of any nature for receiving, executing, or returning any process or mandate or for any services in connection therewith. (Code 1981, § 38-2-1046.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1047. Refusal to appear or testify; penalty.

(a) Any person not subject to this article who:

(1) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial or court of inquiry or before any military or civil officer designated to take a deposition to be read in evidence before such court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a criminal court of this state; and

(3) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce

shall be punished by the military court in the same manner as a criminal court of this state.

(b) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses or other appropriate funds. (Code 1981, § 38-2-1047, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1048. Contempt; penalty.

(a) A military judge may punish for contempt any person who uses any menacing word, sign, or gesture in his or her presence, or who disturbs the proceedings of the military court by any riot or disorder.

(b) A person subject to this article may be punished for contempt by confinement not to exceed 30 days or a fine of $1,000.00, or both.

(c) A person not subject to this article may be punished for contempt by a military court in the same manner as a criminal court of this state. (Code 1981, § 38-2-1048, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1049. Depositions.

(a) At any time after charges have been signed as provided for in Code Section 38-2-1030, the military judge or summary court-martial officer, with approval of the state judge advocate, may allow a party to take oral or written depositions for good cause.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition, and such party may attend and participate in the deposition.

(c) Depositions shall be taken before and authenticated by any military or civil officer authorized by the laws of this state or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, digital image or file, or similar material, may be played in evidence before any military court, if it appears that:

(1) The witness resides or is beyond another state in which the court is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) The witness, by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) The present whereabouts of the witness are unknown. (Code 1981, § 38-2-1049, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1050. Admissibility of records of courts of inquiry.

(a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) In any case extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained may, if otherwise admissible under the rules of evidence, be read in evidence only by the defense.

(c) Such testimony as provided for in subsections (a) and (b) of this Code section may be read in evidence before a court of inquiry in like manner as provided for in subsections (a) and (b) of this Code section. (Code 1981, § 38-2-1050, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1050.1. Defense of mental disease or defect.

(a) It shall be an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect shall not otherwise constitute a defense.

(b) The accused has the burden of proving the defense as provided for by subsection (a) of this Code section by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall follow the procedures set forth in Code Section 17-7-131. (Code 1981, § 38-2-1050.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1051. Voting, rulings, and charge.

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling

made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused shall be final and shall constitute the ruling of the court; provided, however, that the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in Code Section 38-2-1052, beginning with the member junior in rank.

(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them that:

(1) The accused must be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond a reasonable doubt;

(2) In the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(3) If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) The burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the state.

(d) Subsections (a), (b), and (c) of this Code section shall not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition, on request, find the facts specially. If an opinion or memorandum of decision is filed, it shall be sufficient if the findings of fact appear therein. (Code 1981, § 38-2-1051, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2017, p. 774, § 38/HB 323.)

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "beyond a reasonable doubt;" for "beyond reasonable doubt;" at the end of paragraph (c)(1).

38-2-1052. Number of votes required for conviction.

(a) No person shall be convicted of an offense, except:

(1) As provided in Code Section 38-2-1045;

(2) By the vote of two-thirds of the members;

(3) By a summary court-martial officer; or

(4) If a court-martial is composed of a military judge only, by decision of the military judge.

(b) If two-thirds of the members of a court-martial composed of members do not vote for a conviction, the accused shall be acquitted.

(c)(1) All questions other than the questions provided for under subsections (a) and (b) of this Code section to be decided by the members of a general or special court-martial shall be determined by a majority vote; provided, however, that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, shall be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(2) A tie vote on a challenge shall disqualify the member challenged.

(3) A tie vote on a motion relating to the question of the sanity of the accused shall be a determination against the accused.

(4) A tie vote on a question other than the questions provided for under paragraphs (2) and (3) of this subsection shall be a determination in favor of the accused. (Code 1981, § 38-2-1052, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1053. Prompt announcement of findings and sentence.

A court-martial shall announce its findings and sentence to the parties as soon as determined. (Code 1981, § 38-2-1053, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1054. Trial record; contents; authentication; accused entitled to copy.

(a) Each general and special court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his or her death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of his or her death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(b)(1) A complete verbatim record of the proceedings and testimony shall be prepared in each general and special court-martial case resulting in a conviction.

(2) In all court-martial cases other than as provided for by paragraph (1) of this subsection, the record shall contain such matters as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter.

(c) Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. (Code 1981, § 38-2-1054, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Part 8

Sentences

38-2-1055. Cruel and unusual punishments prohibited.

Punishment by flogging or by branding, marking, or tattooing on the body or any other cruel or unusual punishment shall not be adjudged by a court-martial or inflicted upon any person subject to this article. The use of irons, single or double, except for the purpose of safe custody, is prohibited. (Code 1981, § 38-2-1055, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1056. Maximum sentencing limits.

(a) The punishment which a court-martial may direct for an offense shall not exceed such limits as prescribed by this article, but in no instance shall a sentence exceed more than ten years nor shall a sentence of death be adjudged. A conviction by general court-martial of any offense for which an accused may receive a sentence of confinement for more than one year shall be a felony offense. Except for convictions by a summary court-martial, all other convictions shall be misdemeanors. Any conviction by a summary court-martial shall not be a criminal conviction.

(b) The limits of punishment for violations of this article prescribed in subsection (a) of this Code section shall be the lesser of the sentences prescribed by the manual for courts-martial of the United States in effect on January 1, 2015, if such manual contains the offense, and any regulations or manual for courts-martial adopted in this state pursuant to Code Section 38-2-1036, but in no instance shall any punishment exceed that authorized by this article. (Code 1981, § 38-2-1056, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2017, p. 774, § 38/HB 323.)

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "prescribed in subsection (a) of this Code section" for "prescribed herein" near the beginning of subsection (b).

38-2-1057. Effective date of sentences.

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture shall apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture shall extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All sentences of courts-martial, except as provided for by subsections (a) and (b) of this Code section, shall be effective on the date ordered executed. (Code 1981, § 38-2-1057, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1057.1. Deferment of sentence.

(a) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned may, in that person's sole discretion, defer service of the sentence to confinement. Such deferment shall terminate when the sentence is ordered executed. Such deferment may be rescinded at any time by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(b)(1) In any case in which a court-martial sentences an accused as provided for in paragraph (2) of this subsection to confinement, the convening authority shall defer the service of the sentence to confinement, without the consent of the accused, until after the accused has been permanently released to the organized militia by another state, the United States, or a foreign country referred to in that paragraph.

(2) Paragraph (1) of this subsection shall apply to a person subject to this article who:

(A) While in the custody of another state, the United States, or a foreign country is temporarily returned by such state, the United

States, or a foreign country to the organized militia for trial by court-martial; and

(B) After the court-martial, is returned to such state, the United States, or a foreign country under the authority of a mutual agreement or treaty, as the case may be.

(c) In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under Code Section 38-2-1067 is pending, the adjutant general may defer further service of the sentence to confinement while that review is pending. (Code 1981, § 38-2-1057.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1058. Execution of confinement; discipline while in civil jails; hard labor; civil confinement according to law.

(a) A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, shall be carried into execution by confinement in any place authorized by this article. Persons so confined shall be subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

(b) The omission of hard labor as a sentence authorized under this article shall not deprive a confinement facility from employing it, if it otherwise is within the authority of that facility to do so.

(c) No place of confinement shall require payment of any fee or charge for so receiving or confining a person except as otherwise provided by law. (Code 1981, § 38-2-1058, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1058.1. Reduction of pay grade.

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes a dishonorable or bad conduct discharge or confinement shall reduce that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of an enlisted member who is reduced in pay grade under subsection (a) of this Code section is set aside or disapproved, or, as finally approved, does not include any punishment named in paragraphs (1) and (2) of subsection (a) of this Code section, the rights and privileges of which the person was deprived because of that reduction shall be restored, including, but not limited to, pay and allowances. (Code 1981, § 38-2-1058.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1058.2. Forfeiture of pay and allowances.

(a)(1) A court-martial sentence as provided for in paragraph (2) of this subsection shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. Such forfeiture pursuant to this Code section shall take effect on the date determined under Code Section 38-2-1057 and may be deferred as provided by that Code section. The pay and allowances forfeited shall be all pay and allowances due that member during such period.

(2) A sentence covered by this subsection shall be any sentence that includes:

(A) Confinement for more than six months; or

(B) Confinement for six months or less and a dishonorable or bad conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under Code Section 38-2-1060 may waive any or all of the forfeitures of pay and allowances required by subsection (a) of this Code section for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) of this Code section is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in paragraph (2) of subsection (a) of this Code section, the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect. (Code 1981, § 38-2-1058.2, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Part 9

Review of Courts-Martial

38-2-1059. Effect of error of law on appeal; material prejudice; lesser included offense.

(a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding

as includes a lesser included offense. (Code 1981, § 38-2-1059, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1060. Report of findings and sentence; submission of matters for consideration to convening authority; record of trial; modification of findings and sentence; recommendation of staff judge advocate; proceeding in revision; rehearing.

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within 30 days after the accused has been given an authenticated record of the trial and, if applicable, the recommendation of the staff judge advocate of the service of the accused under subsection (d) of this Code section. In a summary court-martial case, such a submission shall be made within 30 days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters as provided for in paragraph (1) of this subsection, the convening authority or other person taking action under this Code section, for good cause, may extend the applicable period under paragraph (1) of this subsection for not more than an additional 60 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing the submission as provided for by paragraph (1) of this subsection.

(4) The accused may waive the right to make a submission to the convening authority as provided for by paragraph (1) of this subsection. Such a waiver shall be made in writing and may not be revoked. For the purposes of paragraph (2) of subsection (c) of this Code section, the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this Code section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. If it is impractical for the convening authority to act, the convening authority shall forward the case to a person exercising general court-martial jurisdiction who may take action under this Code section.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this Code section. Such action may be taken only after consideration of any matters submitted by the accused under subsection (b) of this Code section or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in that person's sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence shall not be required; provided, however, that such person, in the person's sole discretion may:

(A) Dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this Code section on any general or special court-martial case in which there is a finding of guilt, the convening authority or other person taking action under this Code section shall obtain and consider the written recommendation of the staff judge advocate of the service of the accused. The convening authority or other person taking action under this Code section shall refer the record of trial to the staff judge advocate, and the staff judge advocate shall use such record in the preparation of the recommendation. The recommendation of the staff judge advocate shall include such matters as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter and shall be served on the accused, who may submit any matter as provided for by subsection (b) of this Code section. Failure to object in the response to the recommendation or to any matter attached to the recommendation shall waive the right to object thereto.

(e)(1) The convening authority or other person taking action under this Code section, in the person's sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision as provided for by paragraph (1) of this subsection may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision:

(A) Reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) Reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of this article; or

(C) Increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this Code section if that person disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves of the findings and sentence and does not order a rehearing, that person shall dismiss the charges. A rehearing as to the findings shall not be ordered where there is a lack of sufficient evidence in the record to support such findings. A rehearing as to the sentence shall be ordered if the convening authority or other person taking action under this subsection disapproves the sentence. (Code 1981, § 38-2-1060, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1061. Withdrawal of appeal.

(a) In each case subject to appellate review under this article, the accused may file with the convening authority a statement expressly withdrawing the right of the accused to such appeal. Such a withdrawal shall be signed by both the accused and his or her defense counsel and shall be filed in accordance with appellate procedures as provided by law.

(b) The accused may withdraw an appeal at any time in accordance with appellate procedures as provided by law. (Code 1981, § 38-2-1061, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1062. State may appeal certain rulings.

(a)(1) In a trial by court-martial in which a punitive discharge may be adjudged, the state may appeal the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial or by a judge in a bench trial so long as it is not made in reconsideration:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification;

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding;

(C) An order or ruling which directs the disclosure of classified information;

(D) An order or ruling which imposes sanctions for nondisclosure of classified information;

(E) A refusal of the military judge to issue a protective order sought by the state to prevent the disclosure of classified information; and

(F) A refusal by the military judge to enforce an order described in subparagraph (E) of this paragraph that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this Code section shall be diligently prosecuted as provided by law.

(b) An appeal under this Code section shall be forwarded to the court prescribed in Code Section 38-2-1067. In ruling on an appeal under this Code section, such court may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this Code section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit. (Code 1981, § 38-2-1062, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1063. Rehearings; grounds; members of court; effect on sentence.

Each rehearing under this article shall take place before a court-martial composed of members who were not members of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of which the accused was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved

sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial. (Code 1981, § 38-2-1063, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1064. Guilty findings reviewed by state judge advocate.

(a) Each general and special court-martial case in which there has been a finding of guilty shall be reviewed by the state judge advocate or his or her designee who shall be a judge advocate. The state judge advocate shall not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense; the state judge advocate shall assign review of such case to a designee who shall not have acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense. Such review of the state judge advocate or his or her designee shall be in writing and shall contain the following:

(1) Conclusions as to whether:

(A) The court had jurisdiction over the accused and the offense;

(B) The charge and specification stated an offense; and

(C) The sentence was within the limits prescribed as a matter of law;

(2) A response to each allegation of error made in writing by the accused; and

(3) If the case is sent for action under subsection (b) of this Code section, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) of this Code section shall be sent for action to the adjutant general, if:

(1) The judge advocate who reviewed the case recommends corrective action;

(2) The sentence approved under Code Section 38-2-1060 extends to dismissal, a bad conduct or dishonorable discharge, or confinement for more than six months; or

(3) Such action is otherwise required by regulations pursuant to Part 1 of Article 2 of this chapter.

(c)(1) If a record of trial is sent to the adjutant general under subsection (b) of this Code section, the adjutant general may:

(A) Disapprove or approve the findings or sentence, in whole or in part;

(B) Remit, commute, or suspend the sentence in whole or in part;

(C) Except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings or on the sentence, or both; or

(D) Dismiss the charges.

(2) If a rehearing is ordered by the adjutant general but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(3) If the opinion of the state judge advocate, or designee, in the state judge advocate's, or designee's, review under subsection (a) of this Code section is that corrective action is required as a matter of law and if the adjutant general does not take action that is at least as favorable to the accused as that recommended by the state judge advocate, the record of trial and action thereon shall be sent to the Governor for review and action as deemed appropriate.

(d) The state judge advocate, or his or her designee who shall be a judge advocate, may review any case in which there has been a finding of not guilty of all charges and specifications. If the state judge advocate has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense, the state judge advocate may assign such case to a designee who has not acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense and who shall determine whether a review shall be conducted under this subsection. Such review of the state judge advocate or of his or her designee shall be limited to questions of subject matter jurisdiction.

(e) The record of trial and related documents in each case reviewed under subsection (d) of this Code section shall be sent for action to the adjutant general; the adjutant general may:

(1) When subject matter jurisdiction is found to be lacking, void the court-martial ab initio, with or without prejudice to the state, as the adjutant general deems appropriate; or

(2) Return the record of trial and related documents to the state judge advocate or his or her designee for appeal by the state as provided by law. (Code 1981, § 38-2-1064, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1065. Disposition of trial records.

Except as otherwise required by this article, all records of trial and related documents shall be transmitted and disposed of as prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter. (Code 1981, § 38-2-1065, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1066. Reserved.

Reserved. (Code 1981, § 38-2-1066, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1067. Court-martial review panel; members; rules and regulations.

(a)(1) There shall be the court-martial review panel which shall hear appeals of decisions of a court-martial.

(2) The Governor shall appoint five persons to serve as judges on the court-martial review panel. Four such judges shall be retired commissioned officers of the organized militia or state military force of another state or of the armed forces of the United States or a reserve component thereof and a member in good standing of the State Bar of Georgia. One such judge shall be a member in good standing of the State Bar of Georgia and shall not be a member, former member, or retired member of the organized militia or state military force of another state or of the armed forces of the United States or a reserve component thereof.

(3) The Governor shall prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter the convening and administration of the court-martial review panel and the compensation provided to the judges of such panel.

(b)(1) An appeal to the court-martial review panel shall only be made after action on the sentence of a court-martial by the convening authority or by another person authorized to take such action as provided for in Code Section 38-2-1060 or after a decision of the convening authority to deny a petition for a new trial as provided for by Code Section 38-2-1073 or pursuant to Code Section 38-2-1062. Such appeals shall be made within 30 days after such action or decision.

(2) The court-martial review panel shall dispose of each appeal within 90 days of such appeal made thereto. The court-martial review panel shall deliver its decision to the state judge advocate and, within three days, the state judge advocate shall serve a copy of such decision to the accused by statutory overnight delivery. The decision

of the court-martial review panel shall be final for purposes of an appeal to the appellate courts of this state on the date that the state judge advocate mails the decision to the accused.

(c) Any party to a proceeding before the court-martial review panel may secure a review of the final decision of the court-martial review panel by appeal in the manner and form provided by law for appeals from the superior courts to the appellate courts of this state. (Code 1981, § 38-2-1067, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1068 and 38-2-1069. Reserved.

Reserved. (Code 1981, §§ 38-2-1068 and 38-2-1069, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1070. Appellate government counsel.

(a) The state judge advocate shall detail a judge advocate as appellate government counsel to represent the state in the review or appeal of cases provided for in Code Section 38-2-1067 and before any federal court when requested to do so by the attorney general. Appellate government counsel shall be a member in good standing of the bar of the highest court of this state.

(b) Upon an appeal by the state, the accused shall have the right to be represented by detailed military counsel before any reviewing authority and before any appellate court.

(c) Upon an appeal by an accused, the accused shall have the right to be represented by military counsel before any reviewing authority.

(d) Upon the request of an accused entitled to be so represented, the senior force judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases specified in subsections (b) and (c) of this Code section.

(e) An accused may be represented by civilian appellate counsel at no expense to the state. (Code 1981, § 38-2-1070, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1071. Execution of sentence extending to dismissal or dishonorable or bad conduct discharge.

(a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived and an appeal is not withdrawn under Code Section 38-2-1061, that part of the sentence extending to dismissal or a dishonorable or bad conduct discharge shall not be executed until there is a final judgment as to the legality of the proceedings. A

judgment as to the legality of the proceedings shall be final in such cases when review is completed by an appellate court as provided for in Code Section 38-2-1067 and is deemed final by the law of this state.

(b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived or an appeal is withdrawn under Code Section 38-2-1061, that part of the sentence extending to dismissal or a dishonorable or bad conduct discharge shall not be executed until review of the case by the state judge advocate and any action on that review under Code Section 38-2-1064 is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under Code Section 38-2-1060 when so approved under that Code section.

(c) The convening authority may suspend the execution of any sentence or part thereof. (Code 1981, § 38-2-1071, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1072. Vacation of suspension of sentence; hearing; legal representation by military counsel; record of hearing.

(a) Before the vacation of the suspension of a special court-martial sentence, which as approved includes a bad conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged violation of probation. The probationer shall be represented at the hearing by military counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed subject to applicable restrictions in this article.

(c) The suspension of any other sentence may be vacated by any authority competent to convene for the command in which the accused is serving or assigned a court of the kind that imposed the sentence. (Code 1981, § 38-2-1072, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1073. Petition for new trial; time period; grounds.

(a) At any time within five years after approval by the convening authority of a court-martial sentence, the accused may petition the convening authority for a new trial. Some good reason, including but not limited to newly discovered evidence or fraud on the court-martial, must be shown as to why the petition should be granted.

(b) The decision of the convening authority provided for under subsection (a) of this Code section shall be appealable as provided for under Code Section 38-2-1067. (Code 1981, § 38-2-1073, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1074. Remission or suspension of sentence; modification of type of discharge by Governor.

(a) Any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part or amount of the unexecuted part of any sentence, including, but not limited to, all uncollected forfeitures, other than a sentence approved by the Governor.

(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. (Code 1981, § 38-2-1074, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1075. Restoration of rights, privileges, and property, in event of remission; administrative discharge; reinstatement.

(a) Under such regulations as may be prescribed pursuant to this chapter, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad conduct discharge is not imposed on a new trial, the Governor may substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor may substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had the former officer not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the Governor may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including, but not limited

to, the right to pay and allowances. (Code 1981, § 38-2-1075, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1076. Finality of proceedings, findings, and sentences; binding effect.

The appellate review of records of trial provided by this article, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this article, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this article shall be final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings shall be binding upon all departments, courts, agencies, and officers of the United States and officers of another state subject only to action upon a petition for a new trial as provided in Code Section 38-2-1073 and to action under Code Section 38-2-1074. (Code 1981, § 38-2-1076, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1076.1. Court-martial sentence requires taking leave.

Under regulations prescribed pursuant to Part 1 of Article 2 of this chapter, an accused who has been sentenced by a court-martial shall be required to take leave pending completion of action under this Code section if the sentence as approved under Code Section 38-2-1060 includes an unsuspended dismissal or an unsuspended dishonorable or bad conduct discharge. The accused shall be required to begin such leave on the date on which the sentence is approved under Code Section 38-2-1060 or at any time after such date, and such leave shall be continued until the date on which action under this Code section is completed or may be terminated at any earlier time. (Code 1981, § 38-2-1076.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Part 10

Punitive Provisions

38-2-1077. Principals.

Any person subject to this article who:

(1) Commits an offense punishable by this article or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by that person would be punishable by this article

is a principal. (Code 1981, § 38-2-1077, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1078. Accessory after the fact.

Any person subject to this article who, knowing that an offense punishable by this article has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment shall be punished as a court-martial may direct. (Code 1981, § 38-2-1078, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1079. Conviction of lesser included offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. (Code 1981, § 38-2-1079, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1080. Attempts.

(a) An act, done with specific intent to commit an offense under this article, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense.

(b) Any person subject to this article who attempts to commit any offense punishable by this article shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this article may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated. (Code 1981, § 38-2-1080, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1081. Conspiracy.

Any person subject to this article who conspires with any other person to commit an offense under this article shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct. (Code 1981, § 38-2-1081, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1082. Solicitation of desertion, mutiny, misbehavior before the enemy, or sedition.

(a) Any person subject to this article who solicits or advises another or others to desert in violation of Code Section 38-2-1085 or mutiny in violation of Code Section 38-2-1094 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment

provided for the commission of the offense; but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

(b) Any person subject to this article who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Code Section 38-2-1099 or sedition in violation of Code Section 38-2-1094 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense; but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct. (Code 1981, § 38-2-1082, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1083. Fraudulent enlistment, appointment, or separation.

Any person who:

(1) Procures his or her own enlistment or appointment in the organized militia by knowingly false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his or her own separation from the organized militia by knowingly false representation or deliberate concealment as to his or her eligibility for that separation

shall be punished as a court-martial may direct. (Code 1981, § 38-2-1083, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1084. Unlawful enlistment, appointment, or separation.

Any person subject to this article who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to him or her to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. (Code 1981, § 38-2-1084, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1085. Desertion.

(a) Any member of the organized militia shall be guilty of desertion who:

(1) Without authority goes or remains absent from his or her unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) Quits his or her unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from the organized militia, enlists or accepts another appointment in the organized militia, or in one of the armed forces of the United States, without fully disclosing the fact that the member has not been regularly separated, or enters any foreign armed service except when authorized by the United States.

(b) Any commissioned officer of the organized militia who, after tender of his or her resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently shall be guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished by:

(1) Confinement of not more than ten years or such other punishment as a court-martial may direct if the offense is committed in time of war; or

(2) Punishment as a court-martial may direct if the offense occurs at any time other than in time of war. (Code 1981, § 38-2-1085, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1086. Absence without leave.

Any person subject to this article shall be punished as a court-martial may direct who, without authority:

(1) Fails to go to his or her appointed place of duty at the time prescribed;

(2) Goes from his or her place of duty; or

(3) Absents himself or herself or remains absent from his or her unit, organization, or place of duty at which the person is required to be at the time prescribed. (Code 1981, § 38-2-1086, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1087. Missing movement of ship, aircraft, or unit.

Any person subject to this article who through neglect or design misses the movement of a ship, aircraft, or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct. (Code 1981, § 38-2-1087, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1088. Contempt toward officials.

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the

secretary of a military department, the Secretary of Homeland Security, or the Governor or General Assembly shall be punished as a court-martial may direct. (Code 1981, § 38-2-1088, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1089. Disrespect toward a superior officer.

Any person subject to this article who behaves with disrespect toward his or her superior commissioned officer shall be punished as a court-martial may direct. (Code 1981, § 38-2-1089, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1090. Assaulting or willfully disobeying officer.

Any person subject to this article who:

(1) Strikes his or her superior commissioned officer or draws or lifts up any weapon or offers any violence against said superior commissioned officer while he or she is in the execution of his or her office; or

(2) Willfully disobeys a lawful command of his or her superior commissioned officer

shall be punished, if the offense is committed in time of war, by confinement of not more than ten years or such other punishment as a court-martial may direct, or if the offense is committed at any time other than a time of war, by such punishment as a court-martial may direct. (Code 1981, § 38-2-1090, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1091. Insubordination toward warrant or noncommissioned officer.

Any warrant officer or enlisted member shall be punished as a court-martial may direct who:

(1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer while that officer is in the execution of his or her office;

(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer while that officer is in the execution of his or her office. (Code 1981, § 38-2-1091, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1092. Failure to obey order or regulation.

Any person subject to this article shall be punished as a court-martial may direct who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the organized militia, which it is his or her duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his or her duties. (Code 1981, § 38-2-1092, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1093. Cruelty and maltreatment of others under one's command.

Any person subject to this article who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders shall be punished as a court-martial may direct. (Code 1981, § 38-2-1093, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1094. Mutiny and sedition.

(a) Any person subject to this article who:

(1) With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance shall be guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority shall be guilty of sedition; or

(3) Fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which the person knows or has reason to believe is taking place, shall be guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct. (Code 1981, § 38-2-1094, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1095. Resistance, breach of arrest, and escape.

Any person subject to this article shall be punished as a court-martial may direct who:

(1) Resists apprehension;

(2) Flees from apprehension;

(3) Breaks arrest; or

(4) Escapes from custody or confinement. (Code 1981, § 38-2-1095, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1096. Assistance in a prisoner's escape.

Any person subject to this article who, without proper authority, releases any prisoner committed to his or her charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law. (Code 1981, § 38-2-1096, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1097. Unlawful detention.

Any person subject to this article who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct. (Code 1981, § 38-2-1097, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1098. Noncompliance with procedural rules; unnecessary delay.

Any person subject to this article shall be punished as a court-martial may direct who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this article; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this article regulating the proceedings before, during, or after trial of an accused. (Code 1981, § 38-2-1098, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1099. Misbehavior before the enemy.

Any person subject to this article shall be punished as a court-martial may direct who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his or her duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away his or her arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits his or her place of duty to plunder or pillage;

(7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the organized militia;

(8) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing which it is his or her duty so to encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to another state, when engaged in battle. (Code 1981, § 38-2-1099, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1100. Compelling surrender.

Any person subject to this article who compels or attempts to compel a commander, an individual in command of the National Guard of another state, or an individual in command of a vessel, aircraft, or other military property or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct. (Code 1981, § 38-2-1100, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1101. Disclosure or improper use of countersign or parole.

Any person subject to this article who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another, who is entitled to receive and use the parole or countersign, a different parole or countersign from that which, to his or her knowledge, the person was authorized and required to give, shall be punished as a court-martial may direct. (Code 1981, § 38-2-1101, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1102. Forcing a safeguard.

Any person subject to this article who forces a safeguard shall be punished as a court-martial may direct. (Code 1981, § 38-2-1102, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1103. Captured or abandoned property; trading and looting prohibited.

(a) All persons subject to this article shall secure all public property taken for the service of the United States or this state or another state and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this article shall be punished as a court-martial may direct who:

(1) Fails to carry out the duties prescribed in subsection (a) of this Code section;

(2) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or abandoned property, whereby the person receives or expects any profit, benefit, or advantage to himself or herself or another directly or indirectly connected with himself or herself; or

(3) Engages in looting or pillaging. (Code 1981, § 38-2-1103, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2016, p. 864, § 38/HB 737.)

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "subsection (a) of this Code section" for "subsection (a)" at the end of paragraph (b)(1).

38-2-1104. Aiding the enemy.

Any person subject to this article shall be punished as a court-martial may direct who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly. (Code 1981, § 38-2-1104, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1105. Misconduct as prisoner of war.

Any person subject to this article shall be punished as a court-martial may direct who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his or her captors acts without proper authority in a manner contrary to law, custom, or regulation to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause. (Code 1981, § 38-2-1105, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1106. Reserved.

Reserved. (Code 1981, § 38-2-1106, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1107. Signing false official document; making false official statement.

Any person subject to this article who, with intent to deceive, signs any false record, return, regulation, order, or other official document made in the line of duty, knowing it to be false, or makes any other false official statement made in the line of duty, knowing it to be false, shall be punished as a court-martial may direct. (Code 1981, § 38-2-1107, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1108. Military property; loss, damage, destruction, or wrongful disposition.

Any person subject to this article shall be punished as a court-martial may direct who, without proper authority:

(1) Takes, sells, or otherwise disposes of any military property of the United States or of another state;

(2) Willfully or through neglect damages, destroys, or loses any military property of the United States or of another state; or

(3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or of another state. (Code 1981, § 38-2-1108, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1109. Property other than military property; waste, spoilage, or destruction.

Any person subject to this article who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully takes, sells, destroys, or damages any property of another other than military property of the United States or of another state shall be punished as a court-martial may direct. (Code 1981, § 38-2-1109, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1110. Willful or negligent hazarding of vessel.

(a) Any person subject to this article who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the

United States or any organized militia shall be punished as a court-martial may direct.

(b) Any person subject to this article who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or the organized militia shall be punished as a court-martial may direct. (Code 1981, § 38-2-1110, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1111. Driving while under the influence of drugs or alcohol.

Any person subject to this article shall be punished as a court-martial may direct who:

(1) Drives, operates, or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance as described in subsection (b) of Code Section 38-2-1112.1; or

(2) Drives, operates, or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood is equal to or exceeds 0.08 grams of alcohol per 100 milliliters of blood, as shown by chemical analysis, within three hours after such operation or control, or the person's breath is equal to or exceeds 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis, within three hours after such operation or control. (Code 1981, § 38-2-1111, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2016, p. 864, § 38/HB 737.)

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (2).

38-2-1112. Under the influence of alcohol while on duty.

Any person subject to this article, other than a sentinel or lookout, who is found under the influence of alcohol sufficient to impair the rational and full exercise of his or her mental or physical faculties on duty shall be punished as a court-martial may direct. (Code 1981, § 38-2-1112, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1112.1. Use, possession, manufacture, distribution, or importation of certain controlled substances; exceptions.

(a) Any person subject to this article who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of

the armed forces of the United States or of the organized militia a substance described in subsection (b) of this Code section shall be punished as a court-martial may direct.

(b) The substances provided for by subsection (a) of this Code section shall be:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance;

(2) Any substance not specified in paragraph (1) of this subsection that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the armed forces of the United States, 10 U.S.C. Section 801, et seq.; and

(3) Any other substance not specified in paragraph (1) of this subsection or contained on a list prescribed by the President under paragraph (2) of this subsection that is listed in schedules I through V of the Controlled Substances Act, 21 U.S.C. Section 812. (Code 1981, § 38-2-1112.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2016, p. 864, § 38/HB 737.)

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (b)(2).

38-2-1113. Drunk or sleeping while standing post.

Any sentinel or lookout who is found under the influence of alcohol sufficient to impair the rational and full exercise of his or her mental or physical faculties or sleeping upon his or her post or leaves it before being regularly relieved shall be punished, if the offense is committed in time of war, by confinement of not more than ten years or other punishment as a court-martial may direct, but if the offense is committed at any time other than in time of war, by such punishment as a court-martial may direct. (Code 1981, § 38-2-1113, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1114. Reserved.

Reserved. (Code 1981, § 38-2-1114, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1115. Malingering; feigning illness; self-infliction of injury.

Any person subject to this article shall be punished as a court-martial may direct who for the purpose of avoiding work, duty, or service:

(1) Feigns illness, physical disablement, mental lapse, or derangement; or

(2) Intentionally inflicts self-injury. (Code 1981, § 38-2-1115, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1116. Riot or breach of peace.

Any person subject to this article who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct. (Code 1981, § 38-2-1116, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1117. Provoking words or gestures.

Any person subject to this article who uses provoking or reproachful words or gestures toward any other person subject to this article shall be punished as a court-martial may direct. (Code 1981, § 38-2-1117, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1118 through 38-2-1130. Reserved.

Reserved. (Code 1981, §§ 38-2-1118 through 38-2-1130, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1131. Perjury.

Any person subject to this article is guilty of perjury and shall be punished as a court-martial may direct who in a judicial proceeding or in a course of justice willfully and corruptly:

(1) Upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) In any declaration, certificate, verification, or statement under penalty of perjury, subscribes any false statement material to the issue or matter of inquiry. (Code 1981, § 38-2-1131, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1132. Fraudulent claims against the government.

Any person subject to this article shall, upon conviction, be punished as a court-martial may direct:

(1) Who, knowing it to be false or fraudulent:

(A) Makes any claim against the United States, this state, or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, this state, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, this state, or any officer thereof:

(A) Makes or uses any writing or other paper or electronic submission knowing it to contain any false or fraudulent statements;

(B) Makes any oath, affirmation, or certification to any fact or to any writing or other paper or electronic submission knowing the oath, affirmation, or certification to be false; or

(C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money or other property of the United States or this state, furnished or intended for the armed forces of the United States or the organized militia, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which the person receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or this state, furnished or intended for the armed forces of the United States or the organized militia, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or this state. (Code 1981, § 38-2-1132, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1133. Conduct unbecoming an officer.

Any commissioned officer, cadet, candidate, or midshipman who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct. (Code 1981, § 38-2-1133, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1134. General provision.

Though not specifically mentioned in this article, all disorders and neglects to the prejudice of good order and discipline in the organized militia and all conduct of a nature to bring discredit upon the organized militia shall be taken cognizance of by a court-martial and punished at the discretion of a military court. However, where a crime constitutes

an offense that violates both this article and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court shall be determined in accordance with subsection (b) of Code Section 38-2-1002. (Code 1981, § 38-2-1134, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

Part 11

Miscellaneous Provisions

38-2-1135. Courts of inquiry; composition; parties; report.

(a) Courts of inquiry to investigate any matter of concern to the organized militia may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry shall consist of three or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

(c) Any person subject to this article whose conduct is subject to inquiry shall be designated as a party. Any person subject to this article who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. (Code 1981, § 38-2-1135, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1136. Authority to administer oaths; limitations; effect of signature.

(a) The following persons shall have the power to administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates;

(2) All summary courts-martial;

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(4) All commanding officers of the naval militia; and

(5) All other persons designated by regulations of the armed forces of the United States or by law.

(b) The following persons shall have the power to administer oaths necessary in the performance of their duties:

(1) The president, military judge, and trial counsel for all general and special courts-martial;

(2) The president and the counsel for the court of any court of inquiry;

(3) All officers designated to take a deposition;

(4) All persons detailed to conduct an investigation;

(5) All recruiting officers; and

(6) All other persons designated by regulations of the armed forces of the United States or by law.

(c) The signature without seal of any such person provided for by subsections (a) and (b) of this Code section, together with the title of his or her office, is prima facie evidence of the person's authority. (Code 1981, § 38-2-1136, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1136.1. Marshals; duties, powers, immunities.

(a) Military judges may appoint and, at any time, remove one or more marshals who shall execute any process, mandate, or order issued by the judge and shall perform all acts and duties by this chapter imposed on or authorized to be performed by any sheriff as defined in Code Section 15-16-10.

(b) All such marshals shall be deemed peace officers and for the purposes of this article shall have all the powers and immunities of peace officers. (Code 1981, § 38-2-1136.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1137. Explanation of Code sections to enlisted personnel.

(a)(1) The Code sections specified in paragraph (3) of this subsection shall be carefully explained to each enlisted member at the time of, or within 90 days after, the member's initial entrance into a duty status with the organized militia.

(2) Such articles as provided for by paragraph (1) of this subsection shall be explained again:

(A) After the member has completed basic or recruit training; and

(B) At the time when the member reenlists.

(3) This subsection shall apply with respect to this Code section and Code Sections 38-2-1002 through 38-2-1005, 38-2-1007 through 38-2-1014, 38-2-1015, 38-2-1025, 38-2-1027, 38-2-1031, 38-2-1037, 38-2-1038, 38-2-1055, 38-2-1077 through 38-2-1134, 38-2-1138, and 38-2-1139.

(b) The text of this article and of the regulations prescribed hereunder shall be made available to a member of the organized militia, upon request by the member, for the member's personal examination.

(c) Failure to provide the explanations of this article as provided for by this Code section shall not be a defense to a court-martial proceeding, the administration of nonjudicial punishment, or any other action. (Code 1981, § 38-2-1137, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1138. Complaints of wrongs by commanding officers.

Any member of the organized militia who believes himself or herself wronged by a commanding officer and who, upon due application to that commanding officer, is refused redress may complain to the assistant adjutant general for army, the assistant adjutant general for air, or the brigadier general in charge of the State Defense Force, as applicable, who shall forward the complaint to the senior force commander over the officer against whom such complaint is made. The senior force commander shall examine into the complaint and take proper measures for redressing the wrong complained of and shall, as soon as possible, send to the adjutant general a true statement of such complaint with the proceedings had thereon. Any complaint against a senior force commander shall be made to the adjutant general who shall examine into the complaint and take proper measures for redressing the wrong complained of. (Code 1981, § 38-2-1138, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1138.1. State administrative letter of reprimand.

(a) The adjutant general, assistant adjutant general for army, or assistant adjutant general for air may issue to any member under his or her authority a state administrative letter of reprimand.

(b) A state administrative letter of reprimand shall not be filed in the member's federal personnel records unless it meets the requirements for filing under the applicable regulations or instructions of the affected member.

(c) A state administrative letter of reprimand shall be included for consideration when determining future assignments within the state for the affected member.

(d) The member against whom a state administrative letter of reprimand is issued shall have the same rights to review evidence and present a rebuttal as he or she would have if the state administrative letter of reprimand were to be filed in his or her federal personnel file. (Code 1981, § 38-2-1138.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1139. Redress of injuries to private property; complaint; investigating board; assessment.

(a) Whenever a complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the organized militia, such commanding officer may, under such regulations prescribed pursuant to Part 1 of Article 2 of this chapter, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board shall be subject to the approval of the commanding officer and, in the amount approved by such commanding officer, shall be charged against the pay of the offenders. The order of the commanding officer directing charges authorized by this Code section shall be conclusive on any disbursing officer for payment to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board. (Code 1981, § 38-2-1139, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2017, p. 774, § 38/HB 323.)

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "charges authorized by this Code section" for "charges herein authorized" near the middle of the last sentence of subsection (a).

38-2-1140. Delegation of authority by Governor.

Except as provided in Code Section 38-2-1022, the Governor may delegate any authority vested in the Governor under this article and provide for the subdelegation of any such authority. (Code 1981, § 38-2-1140, enacted by Ga. L. 2015, p. 753, § 1/HB 98; Ga. L. 2016, p. 864, § 38/HB 737.)

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "subdelegation" for "sub delegation" in this Code section.

38-2-1141. Fees and authorized travel expenses of witnesses, victims, court reporters, and interpreters.

The fees and authorized travel expenses of all witnesses, experts, victims, court reporters, and interpreters, fees for the service of process, the costs of collection, apprehension, detention, and confinement, and all other necessary expenses of prosecution and the administration of military justice, not otherwise payable by any other source, shall be paid out of the military fund as described in Code Section 38-2-170. (Code 1981, § 38-2-1141, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1142. Fines for contempt; methods of collection and payment.

(a) Fines collected as a result of being found in contempt shall be collected in the following manner:

(1) By cash or money order;

(2) By retention of any pay or allowances due or to become due to the person fined from another state or the United States; or

(3) By garnishment or levy, together with costs, on the wages, goods, and chattels of a person delinquent in paying a fine, as provided by law.

(b) Any sum so received or retained shall be deposited in the military justice fund as provided in Code Section 38-2-170. (Code 1981, § 38-2-1142, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1143. Construction with the federal Uniform Code of Military Justice.

This article shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the Uniform Code of Military Justice, Chapter 47 of Title 10 of the United States Code. (Code 1981, § 38-2-1143, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1144. Immunity.

All persons acting under the provisions of this article, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of the acts or omissions which they did or failed to do as part of their duties under this article. (Code 1981, § 38-2-1144, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

38-2-1145. Severability.

The provisions of this article are hereby declared to be severable, and if any provision of this article or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this article. (Code 1981, § 38-2-1145, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

CHAPTER 3

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PART 1

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ARTICLE 1

GENERAL PROVISIONS

38-3-3. Definitions.

As used in Articles 1 through 3 of this chapter, the term:

(1) "Bioterrorism" means the intentional creation or use of any microorganism, virus, infectious substance, or any component thereof, whether naturally occurring or bioengineered, to cause death, illness, disease, or other biological malfunction in a human, animal, plant, or other living organism in order improperly or illegally to influence the conduct of government, to interfere with or disrupt commerce, or to intimidate or coerce a civilian population.

(2) "Emergency management" means the preparation for the carrying out of all emergency functions other than functions for which military forces are primarily responsible to prevent, minimize, and repair injury and damage resulting from emergencies, energy emergencies, disasters, or the imminent threat thereof, of manmade or natural origin caused by enemy attack, sabotage, acts of domestic or international terrorism, civil disturbance, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infestation, explosion, riot or other hostile action, radiological action, or other causes. These functions include, without limitation, fire-fighting services; police services; emergency medical services; rescue; engineering; warning services;

communications; defense from radiological, chemical, biological, and other special weapons to include weapons of mass destruction; evacuation of persons from stricken areas; emergency welfare services; consequence management functions to include victim services; emergency transportation; plant protection; temporary restoration of public utility services; and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

(2.1) "Emergency Operations Command" means the unified command group comprising the director of emergency management and homeland security, the director of the Georgia Bureau of Investigation, the commissioner of public safety, the commissioner of natural resources, the commissioner of transportation, and the adjutant general.

(3) "Energy emergency" means a condition of danger to the health, safety, welfare, or economic well-being of the citizens of this state arising out of a present or threatened shortage of usable energy resources; also any condition of substantial danger to the health, safety, or welfare of the citizens of this state resulting from the operation of any electrical power-generating facility, the transport of any energy resource by any means whatsoever, or the production, use, or disposal of any source material, special nuclear material, or by-product, as defined by the Atomic Energy Act of 1954, 68 Stat. 919, 42 U.S.C. Section 2011, et seq.; also any nuclear incident, as defined by the Atomic Energy Act of 1954, occurring within or outside this state, substantially affecting the health, safety, or welfare of the citizens of this state.

(4) "Energy resources" means all forms of energy or power including, without limitation, oil, gasoline, and other petroleum products; natural or synthetic gas; electricity in all forms and from all sources; and other fuels of any description, except wood.

(4.1) "Homeland security activity" shall have the same meaning as provided for in Code Section 35-3-200.

(4.2) "Pandemic influenza emergency" means the declaration by the World Health Organization of at least a Phase 5 Pandemic Alert for influenza occurring in the United States or the State of Georgia or the declaration by the Centers for Disease Control and Prevention of at least a Category 2 Pandemic Severity Index for influenza occurring in the United States or the State of Georgia.

(5) "Political subdivision" means:

(A) Cities having a population of over 1,000;

(B) Cities having a population of less than 1,000 in which the Governor has established a local organization; and

(C) Counties.

(6) "Public health emergency" means the occurrence or imminent threat of an illness or health condition that is reasonably believed to be caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin and poses a high probability of any of the following harms:

(A) A large number of deaths in the affected population;

(B) A large number of serious or long-term disabilities in the affected population; or

(C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(7) "State of emergency" means the condition declared by the Governor when, in his or her judgment, the threat or actual occurrence of a disaster, emergency, or energy emergency in any part of the state is of sufficient severity and magnitude to warrant extraordinary assistance by the state to supplement the efforts and available resources of the several localities and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby. (Ga. L. 1951, p. 224, § 3; Ga. L. 1973, p. 74, §§ 2, 6; Ga. L. 1977, p. 192, § 1; Ga. L. 1981, p. 389, § 2; Ga. L. 1982, p. 3, § 38; Ga. L. 1995, p. 10, § 38; Ga. L. 1999, p. 372, § 1; Ga. L. 2002, p. 1386, § 11; Ga. L. 2009, p. 184, § 3/HB 217; Ga. L. 2012, p. 775, § 38/HB 942; Ga. L. 2018, p. 681, § 1-1/HB 779.)

The 2018 amendment, effective July 1, 2018, added paragraph (2.1); inserted a comma following "use" in the middle of paragraph (3); added paragraph (4.1); redesignated former paragraph (4.1) as present paragraph (4.2); and inserted "or her" near the middle of paragraph (7).

ARTICLE 2

ORGANIZATION AND ADMINISTRATION

38-3-20. Georgia Emergency Management and Homeland Security Agency created; director; staff; offices; director's duties; disaster coordinator.

(a) There is established the Georgia Emergency Management and Homeland Security Agency with a director of emergency management and homeland security who shall be the head thereof. The Georgia Emergency Management and Homeland Security Agency shall be assigned to the Office of Planning and Budget for administrative purposes only as provided in Code Section 50-4-3.

(b) The Governor shall appoint the director of emergency management and homeland security. He or she shall hold office at the pleasure of the Governor, who shall fix his or her compensation. The director of emergency management and homeland security shall hold no other state office.

(c) The director may employ such professional, technical, clerical, stenographic, and other personnel, may fix their compensation, and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management and homeland security, as may be necessary to carry out the purposes of Article 9 of Chapter 3 of Title 35; Article 1, this article, and Article 3 of this chapter; and the duties of the agency and the director described in Part 4 of Article 2 of Chapter 5 of Title 46, the "Georgia Emergency Telephone Number 9-1-1 Service Act of 1977," as amended.

(d) The director and other personnel of the Georgia Emergency Management and Homeland Security Agency shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

(e) The director, subject to the direction and control of the Governor, shall:

(1) Be the executive head of the Georgia Emergency Management and Homeland Security Agency and shall be responsible to the Governor for carrying out the program for emergency management and homeland security in this state;

(2) Serve as the central authority reporting to the Governor on all matters relating to homeland security;

(3) Have authority over areas involving imminent or current terrorist activity within this state, including, but not limited to, leading and directing the actions of the Homeland Security Task Force and the Emergency Operations Command where such Emergency Operations Command shall not usurp the operational authority of participating agencies but shall be responsible only for coordinating the public safety response to natural disasters, homeland security activities, and other emergencies within the state;

(4) Coordinate the activities of all organizations for emergency management and homeland security within the state;

(5) Maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government;

(6) Through risk and threat assessments, coordinate plans for timely and complete responses through a network of state, local, and

federal organizations, including, but not limited to, the coordination of efficient and timely flow of information;

(7) Be responsible for crisis and consequence management planning, including, but not limited to, measures to identify, acquire, and plan the use of resources needed to anticipate, prevent, or resolve a threat or act of terrorism;

(8) Coordinate and review activities involving homeland security within any agency, authority, or entity of this state, including, but not limited to, homeland security activities found within the Department of Public Safety, the Georgia Bureau of Investigation, the Georgia National Guard, the Department of Natural Resources, the Department of Community Health, and the Department of Public Health;

(9) Evaluate information developed by the criminal justice community in regard to threats or potential threats of terrorism;

(10) Serve as this state's security manager for the purpose of identifying and processing state personnel for security clearances through the United States Department of Homeland Security; and

(11) Have such additional authority, duties, and responsibilities authorized by Article 1, this article, and Article 3 of this chapter as may be prescribed by the Governor and such additional authority, duties, and responsibilities as described in Article 9 of Chapter 3 of Title 35 and Part 4 of Article 2 of Chapter 5 of Title 46, the "Georgia Emergency Telephone Number 9-1-1 Service Act of 1977," as amended.

(f) The director of emergency management and homeland security shall also be the disaster coordinator and shall act for the Governor when requested to do so. (Ga. L. 1951, p. 224, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 171, § 2; Ga. L. 1981, p. 389, § 2; Ga. L. 1985, p. 468, § 1; Ga. L. 1992, p. 1258, § 3; Ga. L. 1998, p. 1017, § 1; Ga. L. 1999, p. 372, § 2; Ga. L. 2005, p. 660, § 7/HB 470; Ga. L. 2016, p. 91, § 6/SB 416; Ga. L. 2018, p. 681, § 1-2/HB 779.)

The 2016 amendment, effective July 1, 2016, throughout this Code section, inserted "and Homeland Security" and inserted "and homeland security"; in the middle of subsection (c), inserted "Article 9 of Chapter 3 of Title 35,"; and rewrote subsection (e).

The 2018 amendment, effective July 1, 2018, substituted "Title 35; Article 1, this article, and Article 3 of this chapter; and" for "Title 35, Article 1, this article, and Article 3 of this chapter," in the middle of subsection (c); substituted the present provisions of paragraph (e)(3) for the former provisions, which read: "Have command and control authority over all operational areas involving terrorist activity within this state, including, but not limited to, the Homeland Security Task Force and the Homeland Security Central Command when activated by the Governor;"; substituted "Through risk and threat assessments, coordinate" for "Oversee all risk and threat assessments and coordinate all" at the beginning of paragraph (e)(6); in paragraph (e)(8), deleted "all" preceding "activities" near the beginning, and deleted "oversight of" following "but

not limited to," in the middle; deleted "and" at the end of paragraph (e)(9); added paragraph (e)(10); and redesignated former paragraph (e)(10) as present paragraph (e)(11).

38-3-22. Governor's emergency management powers and duties.

(a) The Governor shall have general direction and control of the Georgia Emergency Management and Homeland Security Agency and shall be responsible for the carrying out of the provisions of Article 1, this article, and Article 3 of this chapter and, in the event of disaster or emergency beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

(b) In performing his duties under Articles 1 through 3 of this chapter, the Governor is further authorized and empowered:

(1) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of Articles 1 through 3 of this chapter with due consideration to the plans of the federal government;

(2) To prepare a comprehensive plan and program for emergency management in this state, such plan and program to be integrated into and coordinated with the emergency management and preparedness plans of the federal government and of other states to the fullest possible extent; and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of this state, such plans to be integrated into and coordinated with the emergency management plan and program of this state to the fullest possible extent;

(3) In accordance with the plan and program for emergency management in this state, to ascertain the requirements of the state or the political subdivisions thereof for food, clothing, and other necessities of life, in the event of a manmade or natural emergency or disaster, or enemy attack; to plan for and procure supplies, medicines, materials, and equipment, and to use and employ from time to time any of the property, services, and resources within the state for the purposes set forth in Articles 1 through 3 of this chapter; to make surveys of the industries, resources, and facilities within the state as are necessary to carry out the purposes of Articles 1 through 3 of this chapter; to institute training programs and public information programs, to take all other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual emergency or disaster, and to ensure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need;

(4) To coordinate with the President, the heads of the armed forces, the agency or officers responsible for emergency management and defense of the United States, and the officers and agencies of other states, matters pertaining to emergency management in the state and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies for any action looking to emergency management, including the direction or control of emergency management exercises he deems necessary and appropriate for operational capability;

(5) To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with Articles 1 through 3 of this chapter and with the orders, rules, and regulations made pursuant thereto;

(6) To employ such measures and give such directions to the Department of Public Health and local boards of health as may be reasonably necessary for the purpose of securing compliance with Articles 1 through 3 of this chapter or with the findings or recommendations of the Department of Public Health and local boards of health by reason of conditions arising from emergencies or disasters, manmade or natural, or the threat of enemy attack or otherwise;

(7) To utilize the services and facilities of existing offices and agencies of the state and of the political subdivisions thereof; and all such offices and agencies shall cooperate with and extend their services and facilities to the Governor as he may request;

(8) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of Articles 1 through 3 of this chapter including, with due consideration to the recommendations of the local authorities, full-time state and regional area or field coordinators;

(9) To delegate any authority vested in him under Articles 1 through 3 of this chapter;

(10) On behalf of this state to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a state-wide basis or local political subdivision basis or with a neighboring state. Such mutual aid arrangements shall include but not be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health, medical, and related services; fire-fighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; such other

supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units; and fire-fighting, police, and health units on such terms and conditions as are deemed necessary; and

(11) To sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to in paragraph (10) of this subsection.

(c) In addition to the emergency and disaster prevention measures included in the state and local emergency management plans, the Governor shall be empowered to make such studies, surveys, or analyses of potential emergency or disaster areas of the state as he deems necessary, both public and private, to prevent or reduce the harmful consequences of emergencies or disasters resulting from manmade or natural causes or from enemy attack; and to develop or cause to be developed measures to reduce the harmful consequences indicated in the studies, surveys, or analyses. (Ga. L. 1951, p. 224, § 6; Ga. L. 1973, p. 74, § 3; Ga. L. 1981, p. 389, § 2; Ga. L. 1982, p. 3, § 38; Ga. L. 1992, p. 1258, § 4; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2016, p. 91, § 7/SB 416.)

The 2016 amendment, effective July 1, 2016, inserted "and Homeland Security" near the beginning of subsection (a).

38-3-22.1. Safety plan addressing threat of terrorism required of state agencies or authorities; exemptions; training and technical assistance; confidentiality of plans and related documentation.

(a) Every state agency or authority, except those exempted in subsection (b) of this Code section, shall prepare an agency safety plan to address the threat of terrorism, to respond effectively to such incidents, and to provide a safe environment for state personnel and for those citizens conducting business with state agencies. In addition to acts of terrorism, such plan shall also address preparedness for natural disasters, hazardous materials or radiological accidents, and acts of violence. The safety plans of agencies and authorities shall be prepared with input from the appropriate supervisors and rank-and-file employees and local law enforcement, fire service, public safety, and emergency management agencies. Such plans shall be reviewed internally and, if necessary, updated annually. Such plans shall be submitted to the local emergency management agency.

(b) The Department of Public Safety, the Department of Corrections, and any other state agency which operates secured facilities shall be exempt from the requirements of subsection (a) of this Code section.

(c) Subject to the availability of funds for such purpose, the Georgia Emergency Management and Homeland Security Agency shall provide training and technical assistance to agencies and authorities and may provide such training and technical assistance to local units of government and to critical facilities operated by the private sector. Such training and technical assistance shall include, but not be limited to, crisis response team development, site surveys and safety audits, crisis management planning, exercise design, safe school planning, emergency operations planning, search and seizure, bomb threat management, and model safety plans.

(d) The following records shall not be subject to public inspection or disclosure under Article 4 of Chapter 18 of Title 50:

(1) Site surveys, safety audits, and vulnerability assessments performed pursuant to subsection (a) of this Code section; and

(2) Any other record produced pursuant to this Code section the disclosure of which would, in the determination of the director of the Georgia Emergency Management and Homeland Security Agency, endanger the life or physical safety of any person or persons or the physical safety of any public property. (Code 1981, § 38-3-22.1, enacted by Ga. L. 2004, p. 743, § 1; Ga. L. 2016, p. 91, § 8/SB 416.)

The 2016 amendment, effective July 1, 2016, inserted "and Homeland Security" in the first sentence of subsection (c) and in the middle of paragraph (d)(2).

38-3-22.2. Establishment of Airport Antiterrorism Training Committee; annual training.

Repealed by Ga. L. 2018, p. 681, § 1-3/HB 779, effective July 1, 2018.

Editor's notes. — This Code section was based on Code 1981, § 38-3-22.2, enacted by Ga. L. 2004, p. 743, § 2; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2012, p. 775, § 38/HB 942.

38-3-27. Local organizations for emergency management; creation; structure; powers; directors; appointment, qualifications, and compensation; state to provide financial assistance; entitlement for funding.

(a)(1) The governing body of each county of this state may establish a local organization for emergency management in accordance with the state emergency management plan and program. If a county fails to establish an organization for emergency management in accordance with the state emergency management plan and program, any

municipality in such county may establish its own organization for emergency management. In cases where a county has an organization for emergency management, such organization shall include participation by each city within the county unless the governing authority of any particular city elects to implement its own organization for emergency management. Any two or more of the above-mentioned political subdivisions may, with the approval of the director, contract with each other so as to form one emergency management organization for the entire area included in the bounds of the contracting political subdivisions. The executive officer or governing body of the political subdivision is authorized to nominate a local director to the director of emergency management who shall have the authority to make the appointment. The local director shall have direct responsibility for the organization, administration, and operation of the local organization for emergency management, subject to the direction and control of the executive officer or governing body and shall serve at the pleasure of such executive officer or governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to Article 1, this article, and Article 3 of this chapter.

(2) A local director appointed pursuant to the provisions of paragraph (1) of this subsection who is paid a salary for full-time service as a director by the political subdivision or political subdivisions shall have the following minimum qualifications:

(A) The director shall be at least 21 years of age;

(B) The director shall not have been convicted of a felony. The executive officer or governing body of a political subdivision which nominates a local director shall furnish the director of emergency management two sets of fingerprints of the nominee. The director of emergency management shall forward fingerprints received concerning each nominee to the Georgia Crime Information Center of the Georgia Bureau of Investigation for the purpose of criminal identification through the fingerprint system of identification established by the Georgia Bureau of Investigation and the fingerprint system of identification established by the Federal Bureau of Investigation. The Georgia Crime Information Center shall report the findings of its records search and the records search of the Federal Bureau of Investigation to the director of emergency management;

(C) The director shall have completed a high school education or its equivalent and shall have successfully completed all initial

courses required by the director of emergency management within 180 days following the date of nomination to office or within an extended period as determined by the director of emergency management and shall have successfully completed subsequent courses required by the director of emergency management within an appropriate period as determined by the director of emergency management;

(D) The director shall be capable of writing plans for responding to and recovering from disasters in his jurisdiction and shall be routinely available to respond to emergency scenes, command posts, or operation centers; to coordinate emergency response of public and private agencies and organizations; to attend training; and to attend meetings convened by the appointing authority or the director of emergency management; and

(E) The director shall not be self-employed or have any other occupation in the private sector which conflicts with his duties as a local director.

(3)(A) If a local director appointed pursuant to the provisions of paragraph (1) of this subsection is a part-time director, such part-time director shall meet the minimum qualifications in subparagraphs (A) through (D) of paragraph (2) of this subsection. If such local director is employed under a 40 to 90 percent (time required on job) work contract, such local director shall be required to devote at least 80 hours per month on emergency management matters but not more than 30 hours in any one week during normal business hours of other county offices. If such local director is employed under a 25 to 39 percent (time required on job) work contract, such local director shall be required to devote at least 40 hours per month on emergency management matters but not more than 15 hours in any one week during normal business hours of other county offices.

(B) If the part-time paid director is also a part-time paid employee of the federal or state government, he must have written authorization from the appropriate appointing authority to hold the position of director and to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(C) If the part-time paid director is also a part-time paid employee of county or municipal government in another capacity, that government must enact an order or ordinance specifying that such director will be permitted to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection. The order or ordinance shall also

specify that the individual, when acting as director, shall relinquish authorities and responsibilities associated with his other governmental employment and shall name a person to assume those authorities and responsibilities until such time as the director shall cease to function as director. In no case shall the county or municipal government seek or receive any reimbursement for the part-time paid director's salary if such director is employed and compensated by the county or municipality in another capacity.

(D) If the part-time paid director is also a part-time paid employee in the private sector, he shall have a letter from his employer stating that he shall, without penalty, be permitted to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(E) If the part-time paid director is self-employed, he must certify, by letter, that his schedule shall permit him to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(F) Except as provided in this subparagraph, any director or deputy director of a local emergency management organization appointed after July 1, 1999, shall be a certified emergency manager under the Georgia Emergency Management and Homeland Security Agency's Certified Emergency Manager Program. The curriculum of the Certified Emergency Manager Program and requirements for certification shall be determined by the director of emergency management and homeland security and shall include, but not be limited to, professional development series training, independent study courses, emergency preparedness courses, and field-delivered courses. Certification may be obtained by an appointed director or deputy director within six months of his or her appointment. Certification shall expire biennially. As a condition of certification renewal, such emergency management personnel shall be required to satisfactorily complete continuing education requirements provided for in subparagraph (G) of this paragraph.

(G) Emergency management personnel certified under the Certified Emergency Manager Program shall complete annually a minimum of 24 hours of continuing education to maintain certification. The continuing education shall include programs and courses sponsored or approved by the director of emergency management. Personnel who lose their certification because of their failure to meet continuing education requirements will be eligible for recertification under provisions included in the Certified Emergency Manager Program.

(4) If a political subdivision has a volunteer director, the political subdivision shall furnish assistance to enable the volunteer director

to carry out his duties outlined in this article and Article 3 of this chapter.

(5) The political subdivision shall designate an office in a building owned or leased by the political subdivision as the office of emergency management. Such office of emergency management shall have appropriate equipment and supplies, including but not limited to telephone and communication equipment, access to the 9-1-1 system if such system is operational in the political subdivision, desks, typewriters, file cabinets, and necessary office supplies. No such equipment or supplies shall be used for personal business. The local director shall post on the front door of the office the schedule of hours of the work week in which he will be attending to emergency management matters. The citizens of a political subdivision shall have accessibility to the office of emergency management and the local director or his designee shall be available or on call at all times beyond working hours.

(6) A local director whose salary is reimbursed in part or in full by the Georgia Emergency Management and Homeland Security Agency shall also meet all requirements which may be imposed by the federal emergency management agency or its successor.

(7) A local director who no longer meets the qualifications or complies with the requirements of this subsection may be removed by the director of emergency management. In any case where a local director is removed pursuant to this paragraph, the executive officer or governing body of the political subdivision shall nominate another local director.

(b) Each political subdivision shall have the power and authority:

(1) To appropriate and expend funds, to execute contracts, and to obtain and distribute equipment, materials, and supplies for emergency management purposes;

(2) To provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency or disaster resulting from manmade or natural causes or enemy attack and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies;

(3) To appoint, employ, remove, or provide, with or without compensation, chiefs of services, warning personnel, rescue teams, auxiliary fire and police personnel, and other emergency management workers;

(4) To establish a primary and one or more secondary control centers to serve as command posts during an emergency or disaster;

(5) Subject to the order of the Governor or the chief executive of the political subdivision, to assign and make available for duty the employees, property, or equipment of the subdivision relating to fire-fighting, engineering, rescue, health, medical, and related services and to police, transportation, construction, and similar items or services for emergency management purposes, within or outside of the physical limits of the subdivision;

(6) In addition to the heretofore stated powers and authorities, to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims; and to enter into whatever arrangements, including purchase, of temporary housing units and payment of transportation charges which are necessary to prepare or equip such sites to utilize the housing units.

(c) There is created a state fund to provide assistance to local organizations for emergency management which are authorized by subsections (a) and (b) of this Code section. The fund shall be used for the purpose of making grants to local emergency management organizations to enable them to purchase or otherwise obtain equipment which is needed for disaster preparedness. The fund shall be administered by the director of emergency management who, by rules and regulations, shall establish uniform criteria governing application for and the use of funds granted to local organizations for emergency management pursuant to this subsection. The rules and regulations shall include, but shall not be limited to, provisions:

(1) Requiring that, as a condition precedent to receiving a state grant pursuant to this subsection, an amount equal to the state grant shall be raised from local funds for the purchase of disaster preparedness equipment;

(2) Defining disaster preparedness equipment which shall qualify for purchase by the use of matching funds made available pursuant to this subsection;

(3) Establishing procedures and requirements governing the purchase of disaster preparedness equipment when matching funds made available pursuant to this subsection are used for the purchase;

(4) Establishing priorities governing grants made pursuant to this subsection which shall be based on the most effective and efficient use of disaster preparedness equipment purchased with matching funds made available pursuant to this subsection;

(5) Establishing forms, procedures, and requirements governing applications for grants pursuant to this subsection; and

(6) Prohibiting any single local emergency management organization from receiving more than 12 1/2 percent of the total funds annually appropriated to carry out this subsection.

(d) The funds necessary to carry out subsection (c) of this Code section shall come from funds specifically appropriated for such purpose by the General Assembly.

(e)(1) To the extent funds are appropriated for such purpose by the General Assembly, the director of emergency management is authorized and directed to provide funds to counties or municipalities which operate a local emergency management organization as required by this Code section. No county or municipality shall be entitled to receive funds unless the local emergency management organization has met all of the state and federal requirements to be an emergency management organization qualified to receive federal funds, including:

(A) Legal establishment by local ordinance or resolution;

(B) A legally appointed local director who has been endorsed and approved by the state director of emergency management and appointed by the Governor;

(C) An approved emergency and disaster plan with all applicable annexes; and

(D) An approved fiscal year program paper and other necessary compliance documents.

(2) The amount provided to each county or municipality shall be equal to the amount of any shortfall in federal funding which results in federal funds which less than match (on a 50 percent–50 percent basis) the amount budgeted by the county or municipality for the purpose of operating and maintaining the local emergency management organization.

(3) In the event sufficient state funds other than those from federal sources are not appropriated for a fiscal year to fund the full amount provided for in paragraph (2) of this subsection, then the amount which would otherwise be payable to each county and municipality shall be reduced pro rata on the basis of the funds actually appropriated.

(4) The director of emergency management is authorized and directed to adopt and promulgate appropriate rules and regulations to carry out this subsection.

(5) Funds to carry out this subsection shall come from funds appropriated to the Office of Planning and Budget specifically for the purposes of carrying out this subsection.

(f)(1) After December 31, 1993, any county which fails at any time to have established a local organization for emergency management in accordance with the state emergency management plan and program shall not be entitled to any state funding for disaster relief assistance.

(2) After December 31, 1993, if a county has an organization for emergency management but a municipality within the county is not a part of the county's organization or plan and fails to have in place a local organization for emergency management in accordance with the state emergency management plan and program, such municipality shall not be entitled to any state funding for disaster relief assistance. (Ga. L. 1951, p. 224, § 9; Ga. L. 1963, p. 473, § 1; Ga. L. 1973, p. 74, § 6; Ga. L. 1975, p. 1262, § 1; Ga. L. 1980, p. 1247, § 1; Ga. L. 1981, p. 389, § 2; Ga. L. 1981, p. 1802, § 1; Ga. L. 1982, p. 3, § 38; Ga. L. 1991, p. 654, §§ 1, 2; Ga. L. 1992, p. 6, § 38; Ga. L. 1992, p. 1258, §§ 5, 6; Ga. L. 1999, p. 372, § 3; Ga. L. 2005, p. 660, § 8/HB 470; Ga. L. 2009, p. 8, § 38/SB 46; Ga. L. 2016, p. 91, § 9/SB 416.)

The 2016 amendment, effective July 1, 2016, in subparagraph (a)(3)(F), inserted "and Homeland Security" in the first sentence and inserted "and homeland security" in the second sentence, and, in the middle of paragraph (a)(6), inserted "and Homeland Security".

38-3-37. Prohibited actions by government official or employee during declared state of emergency.

(a) As used in this Code section, the term:

(1) "Firearm" means any handgun, rifle, shotgun, or similar device or weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.

(2) "License holder" shall have the same meaning as set forth in Code Section 16-11-125.1.

(3) "Weapon" shall have the same meaning as set forth in Code Section 16-11-125.1.

(b) No official or employee of the state or any political subdivision thereof, member of the National Guard in the service of the state, or any person operating pursuant to or under color of state law, while acting during or pursuant to a declared state of emergency, shall:

(1) Temporarily or permanently seize, or authorize the seizure of, any firearm or ammunition or any component thereof the possession of which was not prohibited by law at the time immediately prior to the declaration of a state of emergency, other than as provided by the criminal or forfeiture laws of this state;

(2) Prohibit possession of any firearm or ammunition or any component thereof or promulgate any rule, regulation, or order

prohibiting possession of any firearm or ammunition or any component thereof if such possession was not otherwise prohibited by law at the time immediately prior to the declaration of a state of emergency;

(3) Prohibit any license holder from carrying any weapon or promulgate any rule, regulation, or order prohibiting such carrying if such carrying was not otherwise prohibited by law at the time immediately prior to the declaration of a state of emergency; or

(4) Require the registration of any firearm. (Code 1981, § 38-3-37, enacted by Ga. L. 2014, p. 599, § 2-2/HB 60.)

Effective date. — This Code section became effective July 1, 2014.

Cross references. — Right to Keep and Bear Arms, US Const., amend. 2.

Editor's notes. — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Ga. L. 2014, p. 599, § 2-1/HB 60, not codified by the General Assembly, provides: "This part shall be known to be in honor of Representative Bobby Franklin."

Law reviews. — For article on the 2014 enactment of this Code section, see 31 Ga. St. U.L. Rev. 47 (2014).

38-3-38. Entrance upon private property by Department of Corrections personnel during state of emergency or disaster.

During any state of emergency or state of disaster declared by the Governor pursuant to Code Section 38-3-51, Department of Corrections personnel and individuals in their custody and subject to their direction shall be authorized to enter upon private property following such declaration to the extent necessary for property protection, debris removal, restoration of services, and infrastructure repair and relocation; provided, however, that such personnel and individuals shall avoid interfering with the rights of private property owners and shall vacate such private property upon request of any owner thereof. (Code 1981, § 38-3-38, enacted by Ga. L. 2017, p. 416, § 1/HB 251.)

Effective date. — This Code section became effective July 1, 2017.

ARTICLE 2A

BOARD OF HOMELAND SECURITY

Effective date. — This article became effective July 1, 2018.

38-3-40. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Homeland Security.

(2) "Center" means the Georgia Information Sharing and Analysis Center.

(3) "Critical infrastructure" shall have the same meaning as set forth in Code Section 16-11-220.

(4) "Domestic terrorism" shall have the same meaning as set forth in Code Section 16-11-220.

(5) "Public transportation system" shall have the same meaning as set forth in Code Section 16-11-220.

(6) "Serious bodily harm" shall have the same meaning as set forth in Code Section 16-11-220.

(7) "State or government facility" shall have the same meaning as set forth in Code Section 16-11-220. (Code 1981, § 38-3-40, enacted by Ga. L. 2018, p. 681, § 1-4/HB 779.)

38-3-41. Creation; membership; allowances.

(a) There is created a Board of Homeland Security that shall, for administrative purposes only, be attached to the Georgia Emergency Management and Homeland Security Agency.

(b) The board shall consist of 16 members who shall be as follows:

(1) The Governor, ex officio, who shall be chairperson of the board;

(2) The director of emergency management and homeland security;

(3) The director of the Georgia Bureau of Investigation;

(4) The commissioner of public safety;

(5) The Attorney General or his or her designee who shall be the deputy attorney general or an assistant attorney general;

(6) The adjutant general;

(7) The commissioner of natural resources;

(8) The commissioner of public health;

(9) The State School Superintendent;

(10) The commissioner of transportation;

(11) The Commissioner of Agriculture;

(12) The executive director of the Georgia Technology Authority; and

(13) Five appointees of the Governor who shall be individuals from the public or private sector who are directly involved in policy, program, security, or funding activities relevant to homeland security or infrastructure protection; provided, however, that one such appointment shall be a sheriff, one such appointment shall be a member of the Senate, one such appointment shall be a member of the House of Representatives, and one such appointment shall be a chief executive of a law enforcement agency of a county or a municipality. Such appointees under this paragraph shall serve at the pleasure of the Governor.

(c)(1) Any legislative members of the board who may be appointed pursuant to paragraph (13) of subsection (b) of this Code section shall receive the allowances provided for in Code Section 28-1-8.

(2) Members of the board who are state or local government officials, other than legislative members, or state or local government employees shall receive no compensation for their services on the board, but they may be reimbursed for expenses incurred by them in the performance of their duties as members of the board in the same manner as they are reimbursed for expenses in their capacities as state or local government officials or state or local government employees.

(3) Members of the board who are not legislators, state or local government officials, or state or local government employees shall receive a daily expense allowance in an amount the same as that specified in subsection (b) of Code Section 45-7-21, as well as the mileage or transportation allowance authorized for state employees.

(4) Funds for the reimbursement of the expenses of state or local government officials, other than legislative members, and state or local government employees shall come from funds appropriated to or otherwise available to their respective governments, departments, authorities, or agencies. (Code 1981, § 38-3-41, enacted by Ga. L. 2018, p. 681, § 1-4/HB 779.)

38-3-42. Board's duty to advise Governor; development of state-wide homeland security strategy; coordination with federal strategic guidance on homeland security; rules and regulations.

(a) The board shall advise the Governor on:

(1) The implementation of the homeland security strategy by state and local agencies and provide specific guidance and counsel for helping those agencies implement the strategy; and

(2) All matters related to the planning, development, coordination, and implementation of initiatives to promote the homeland security strategy of the state.

(b) The board shall develop a state-wide homeland security strategy that improves the state's ability to:

(1) Protect against, respond to, and recover from domestic terrorism and other homeland security threats and hazards; and

(2) Mitigate loss of life and property by lessening the impact of future homeland security threats and hazards.

(c) The board's homeland security strategy shall coordinate homeland security activities among and between local, state, and federal agencies and the private sector and shall include specific plans for:

(1) Intelligence gathering, analysis, and sharing;

(2) Reducing the state's vulnerability to domestic terrorism and other homeland security threats and hazards;

(3) Protecting critical infrastructure, public transportation systems, and state or government facilities;

(4) Protecting the state's ports and airports;

(5) Detecting, deterring, and defending against domestic terrorism and cyber, biological, chemical, and nuclear terrorism;

(6) Positioning equipment, technology, and personnel to improve the state's ability to respond to homeland security threats and hazards;

(7) Providing the center certain forms of authority to aid the Georgia Emergency Management and Homeland Security Agency in implementing the homeland security strategy of this state; and

(8) Using technological resources to:

(A) Facilitate the interoperability of governmental technology resources, including data, networks, and applications;

(B) Coordinate the warning and alert systems of state and local agencies;

(C) Incorporate multidisciplinary approaches to homeland security; and

(D) Improve the security of governmental and private sector information technology and information resources.

(d) The homeland security strategy shall complement and operate in coordination with federal strategic guidance on homeland security.

(e) The board shall adopt rules and regulations which shall be adopted, established, promulgated, amended, repealed, filed, and published in accordance with the applicable provisions and procedures set forth in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The courts shall take judicial notice of any such rules or regulations. As used in this subsection, the term "rules and regulations" shall have the same meaning as the word "rule" as defined in paragraph (6) of Code Section 50-13-2. (Code 1981, § 38-3-42, enacted by Ga. L. 2018, p. 681, § 1-4/HB 779.)

ARTICLE 3

EMERGENCY POWERS

Part 1

Governor

38-3-50. Emergency interim successors to various officials; necessity of declared emergency.

(a) As used in this Code section, the term:

(1) "Disaster" means any happening that causes great harm or damage.

(2) "Emergency" means a sudden generally unexpected occurrence or set of circumstances demanding immediate action.

(3) "Emergency interim successor" means a person designated pursuant to this Code section, in the event an officer is unavailable to exercise the powers and discharge the duties of an office, until a successor is appointed or elected and qualified as may be prescribed by the Constitution, statutes, laws, charters, and ordinances of this state and its political subdivisions, or until the lawful incumbent or his successor is able to resume the exercise of the powers and the discharge of the duties of the office.

(4) "Local offices and local officers" means positions in the political subdivisions of the state.

(5) "Office" means the position of head of any and all departments, agencies, boards, or commissions of the state or any of its political subdivisions; all constitutional General Assembly offices; all constitutional and other county offices; all of the judgeships of the state and its political subdivisions; and all of the positions in the legislative departments of the state or its political subdivisions.

(6) "Officer" means the individual who shall hold an office.

(7) "Political subdivisions" means cities, counties, towns, villages, authorities, and any other bodies created by the state and exercising any of the governmental powers of the state.

(8) "State office" and "state officer" mean positions in the government of this state.

(9) "Unavailable" means either that a vacancy in an office exists as the result of any emergency as defined in paragraph (2) of this subsection and there is no deputy or other successor authorized to exercise all of the powers and discharge all of the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(b) All state officers shall within 30 days after taking office, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of office, designate by title individuals as emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this Code section to ensure their current status. The officer will designate a sufficient number of such emergency interim successors so that there will be not less than three nor more than seven deputies or emergency interim successors or any combination thereof at any time. In the event that any state officer is unavailable following an emergency or disaster and in the event his deputy, if any, is also unavailable, the powers of his office shall be exercised and the duties of his office shall be discharged by his designated emergency interim successors in the order specified. The emergency successors shall exercise the powers and discharge the duties only until such time as the Governor under the Constitution or authority other than this Code section, or other official authorized under the Constitution or this Code section to exercise the powers and discharge the duties of the office of Governor, may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed or elected and qualified as provided by law, or until an officer or his deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of his office.

(c) All emergency interim successors designated under this Code section shall have the same qualifications as are prescribed by law for the officer by whom they are designated.

(d) Designations of emergency interim successors to state officers shall become official upon the officer filing a list of the successors with

the Secretary of State, who shall inform the Governor, the Georgia Emergency Management and Homeland Security Agency, all emergency interim successors to the officer involved, and the judge of the probate court of the county of legal residence of the successors of all such designations and any changes therein. Any designation of an emergency interim successor may be changed or altered by the officer concerned filing a notice of the change or alteration with the Secretary of State.

(e) All constitutional county officers shall within 30 days after taking office, in addition to any deputy authorized pursuant to law to exercise all the powers and discharge the duties of the office, designate by title individuals as emergency interim successors and specify their order of succession. The successors shall have the same powers, duties, and qualifications as specified by subsections (b) and (c) of this Code section for successors to state officers. Designations of the successors shall be made in the same manner as prescribed for successors to state officers in subsection (d) of this Code section.

(f) The legislative bodies of all political subdivisions of the state are authorized and directed to provide by ordinance or resolution for emergency interim successors for the officers of the political subdivisions. The resolutions and ordinances shall not be inconsistent with this Code section.

(g) At the time of their designation, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

(h) Emergency interim successors shall receive the same compensation as is paid the officer by whom they are appointed. The compensation shall be paid only during such time as a successor shall exercise the powers of the officer by whom he has been designated.

(i) Governmental powers shall be exercised by emergency interim successors appointed under this Code section only during a period of emergency or disaster, as defined by this Code section. (Ga. L. 1958, p. 628, § 1; Ga. L. 1962, p. 469, § 1; Ga. L. 1973, p. 74, § 9; Ga. L. 1992, p. 1258, § 7; Ga. L. 2016, p. 91, § 10/SB 416.)

The 2016 amendment, effective July 1, 2016, inserted "and Homeland Security" in the middle of the first sentence of subsection (d).

38-3-51. Emergency powers of Governor; termination of emergency; limitations in energy emergency; immunity.

(a) In the event of actual or impending emergency or disaster of natural or human origin, or pandemic influenza emergency, or impending or actual enemy attack, or a public health emergency, within or affecting this state or against the United States, the Governor may declare that a state of emergency or disaster exists. As a condition precedent to declaring that a state of emergency or disaster exists as a result of a public health emergency, the Governor shall issue a call for a special session of the General Assembly pursuant to Article V, Section II, Paragraph VII of the Constitution of Georgia, which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. The state of emergency or disaster shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with, to the extent that emergency or disaster conditions no longer exist, and terminates the state of emergency or disaster. No state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor. The General Assembly by concurrent resolution may terminate a state of emergency or disaster at any time. Thereupon, the Governor shall by appropriate action end the state of emergency or disaster.

(b) A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to Articles 1 through 3 of this chapter or any other law relating to emergencies or disasters.

(c) The Governor shall have and may exercise for such period as the state of emergency or disaster exists or continues the following additional emergency powers:

(1) To enforce all laws, rules, and regulations relating to emergency management and to assume direct operational control of all civil forces and helpers in the state;

(2) To seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law;

(3) To sell, lend, give, or distribute all or any such property among the inhabitants of the state and to account to the proper agency for any funds received for the property; and

(4) To perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.

(d) In addition to any other emergency powers conferred upon the Governor by law, he may:

(1) Suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(2) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency or disaster;

(3) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(4) Commandeer or utilize any private property if he finds this necessary to cope with the emergency or disaster;

(4.1) Compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. The use of such health care facility may include transferring the management and supervision of the health care facility to the Department of Public Health for a limited or unlimited period of time not extending beyond the termination of the public health emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, or combustibles; provided, however, that for purposes of this paragraph, the terms "explosives" and "combustibles" shall not include firearms or ammunition or any component thereof; and

(9) Make provision for the availability and use of temporary emergency housing.

(e) When the available funds are not sufficient for the purpose of paying the expenses incident to carrying out the provisions authorized by Articles 1 through 3 of this chapter, the Governor may transfer from any available fund in the state treasury such sum as may be necessary to meet the emergency or disaster; and the moneys so transferred shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

(f) In the event that the Governor proclaims an emergency or disaster, as defined by Articles 1 through 3 of this chapter, to be a catastrophe within the meaning of Article III, Section IX, Paragraph VI(b) of the Constitution of the state, the funds referred to in the paragraph may be utilized by the Governor for the purpose of carrying out the provisions authorized by Articles 1 through 3 of this chapter.

(g) In the event that the Governor proclaims an emergency or disaster, as defined in Articles 1 through 3 of this chapter, the Governor may provide welfare benefits to the citizens of this state in the form of grants to meet disaster related necessary expenses or serious needs of individuals or families adversely affected by an emergency or disaster in those cases where the individuals or families are unable to meet the expenses or needs from other means, provided that such grants are authorized only when matching federal funds are available for such purposes pursuant to the Disaster Relief Act of 1974 (Pub. L. 93-288).

(h) If the Governor declares a state of emergency solely because of an energy emergency, he shall not have the authority to:

(1) Seize, take for temporary use, or condemn property other than energy resources as authorized by paragraph (2) of subsection (c) of this Code section;

(2) Sell, lend, give, or distribute property other than energy resources as authorized by paragraph (3) of subsection (c) of this Code section; or

(3) Commandeer or utilize property other than energy resources as authorized by paragraph (4) of subsection (d) of this Code section.

(i)(1) The Governor may direct the Department of Public Health to coordinate all matters pertaining to the response of the state to a public health emergency including without limitation:

(A) Planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state;

(B) Coordinating public health emergency responses between state and local authorities;

(C) Collaborating with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;

(D) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;

(E) Organizing public information activities regarding state public health emergency response operations; and

(F) Providing for special identification for public health personnel involved in a public health emergency.

(2) The following due process procedures shall be applicable to any quarantine or vaccination program instituted pursuant to a declaration of a public health emergency:

(A) Consonant with maintenance of appropriate quarantine rules, the department shall permit access to counsel in person or by such other means as practicable that do not threaten the integrity of the quarantine;

(B) An order imposing a quarantine or a vaccination program may be appealed but shall not be stayed during the pendency of the challenge. The burden of proof shall be on the state to demonstrate that there exists a substantial risk of exposing other persons to imminent danger. With respect to vaccination, the state's burden of proof shall be met by clear and convincing evidence. With respect to quarantine, the state's burden of proof shall be met by a preponderance of the evidence;

(C) An individual or a class may challenge the order before any available judge of the superior courts in the county where the individual or a member of the class resides or in Fulton County. Such judge, upon attestation of the exigency of the circumstances, may proceed ex parte with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties. The judge hearing the matter may consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed to determine the interests of a class or classes. The rules of evidence applicable to civil cases shall be applied to the fullest extent practicable taking into account the circumstances of the emergency. All parties shall have the right to subpoena and cross-examine witnesses, but in enforcement of its subpoena powers the court shall take into account the circumstances of the emergency. All proceedings shall be transcribed to the extent practicable. Filing fees shall be waived and all costs borne by the state;

(D) The judge hearing the matter may enter an appropriate order upholding or suspending the quarantine or vaccination order.

With respect to vaccination, the order may be applicable on notice to the department or its agents administering the vaccination, or otherwise in the court's discretion. With respect to quarantines, the order shall be automatically stayed for 48 hours;

(E) The department or any party may immediately appeal any order to the Supreme Court pursuant to paragraph (7) of subsection (a) of Code Section 5-6-34. The Supreme Court, or any available Justice thereof in the event that circumstances render a full court unavailable, shall consider the appeal on an expedited basis and may suspend any time requirements for the parties to file briefs. In the event no Justice is available, then a panel of the Court of Appeals, or any Judge thereof in the event that circumstances render a panel unavailable, shall consider the appeal on an expedited basis and may suspend any time requirements for the parties to file briefs. If the trial judge has proceeded ex parte or with counsel appointed for the state, the trial court shall either direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees for appeal shall be waived, all costs shall be borne by the state, and such appeals shall be heard expeditiously; and

(F) No provisions of this paragraph shall be construed to limit or restrict the right of habeas corpus under the laws of the United States.

(j) Any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable to any other individual, partnership, association, or corporation by reason thereof in any action seeking legal or equitable relief. (Ga. L. 1951, p. 224, § 7; Ga. L. 1973, p. 74, § 4; Ga. L. 1974, p. 558, § 1; Ga. L. 1975, p. 1551, § 1; Ga. L. 1977, p. 192, §§ 2, 3; Ga. L. 1981, p. 389, § 2; Ga. L. 1983, p. 3, § 59; Ga. L. 2002, p. 1386, §§ 12-15; Ga. L. 2009, p. 184, § 4/HB 217; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 701, § 1/HB 339; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2014, p. 599, § 2-3/HB 60.)

The 2014 amendment, effective July 1, 2014, substituted the present provisions of paragraph (d)(8) for the former provisions, which read: "Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; provided, however, that any limitation on firearms under this Code section shall not include an individual firearm owned by a private citizen which was legal and owned by that citizen prior to the declaration of state of emergency or disaster or thereafter acquired in compliance with all applicable laws of this state and the United States; and".

Editor's notes. — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Ga. L. 2014, p. 599, § 2-1/HB 60, not codified by the General Assembly, provides: "This part shall be known to be in honor of Representative Bobby Franklin."

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 47 (2014). For article, "Lurching from Complacency to Panic in the Fight Against Dangerous Microbes: A Blueprint for a Common Secure Future," see 67 Emory L.J. 337 (2018). For article, "The Case for Streamlining Emergency Declaration Authorities and Adapting Legal Requirements to Ever-Changing Public Health Threats," see 67 Emory L.J. 397 (2018). For article, "Do State Lines Make Public Health Emergencies Worse? Federal Versus State Control of Quarantine," see 67 Emory L.J. 491 (2018).

38-3-57. Establishment of standardized, verifiable, performance based unified incident command system; utilization; training; implementation; funding; first informer broadcasters.

(a) The Georgia Emergency Management and Homeland Security Agency shall establish and maintain, in collaboration with all appropriate state agencies and volunteer organizations with emergency support function roles and professional organizations that represent local public safety agencies, including the Emergency Management Association of Georgia, the Georgia Association of Police Chiefs, the Georgia Fire Chiefs' Association, and the Georgia Sheriffs' Association, a standardized, verifiable, performance based unified incident command system.

(b) Such system shall be consistent with the Georgia Emergency Operations Plan and shall be utilized in response to emergencies and disasters referenced in the Georgia Emergency Operations Plan, including presidentially declared disasters and states of emergency issued by the Governor.

(c) The Georgia Emergency Management and Homeland Security Agency, in cooperation with the Georgia Public Safety Training Center and the State Forestry Commission, shall develop or adopt a course of instruction for use in training and certifying emergency response personnel in unified incident command.

(d) All local public safety and emergency response organizations, including emergency management agencies, law enforcement agencies, fire departments, and emergency medical services, shall implement the standardized unified incident command system provided for in subsection (a) of this Code section by October 1, 2004.

(e) Local agencies that have not established such system by October 1, 2004, shall not be eligible for state reimbursement for any response or recovery related expenses.

(f)(1) As used in this subsection, the term:

(A) "Broadcaster" means any corporation or other entity that is primarily engaged in the business of broadcasting video or audio

programming, whether through the public airwaves, cable, direct or indirect satellite transmission, or any other similar means of communication.

(B) "Emergency" means the declaration of a state of emergency or disaster as provided in Code Section 38-3-51 or as presidentially declared.

(C) "First informer broadcaster" means a broadcaster in Georgia who makes application to the Georgia Emergency Management and Homeland Security Agency for designation as a first informer broadcaster and who is granted such designation as a first informer broadcaster pursuant to rules and regulations promulgated by the director of emergency management and homeland security.

(2) The unified incident command system and the Georgia Emergency Operations Plan shall, by July 1, 2016, establish planning for first informer broadcasters such that first informer broadcasters, to any extent practicable, may during an emergency:

(A) Have access to areas affected by an emergency for the purpose of restoring, repairing, or resupplying any facility or equipment critical to the ability of a broadcaster to acquire, produce, or transmit emergency related programming, including but not limited to repairing and maintaining transmitters and generators and transporting fuel for generators;

(B) Have access to the distribution of fuel, food, water, supplies, equipment, and any other materials necessary for maintaining or producing a broadcast or broadcasting signal; and

(C) Not have vehicles, fuel, food, water, and any other materials seized or condemned that are essential for maintaining or producing a broadcast or broadcasting signal.

(3) The Georgia Emergency Management and Homeland Security Agency may develop or adopt courses of instruction for use in training personnel of first informer broadcasters on personal safety and navigation in an area affected by an emergency. The requirements of any such training shall be established pursuant to rules and regulations promulgated by the director of emergency management and homeland security. The costs of any such training shall be paid by the first informer broadcasters participating in the training. (Code 1981, § 38-3-57, enacted by Ga. L. 2004, p. 743, § 3; Ga. L. 2012, p. 775, § 38/HB 942; Ga. L. 2014, p. 680, § 2/SB 381; Ga. L. 2016, p. 91, § 11/SB 416.)

The 2014 amendment, effective July 1, 2014, added subsection (f).

The 2016 amendment, effective July 1, 2016, throughout this Code section, inserted "and Homeland Security" and inserted "and homeland security".

Editor's notes. — Ga. L. 2014, p. 680, § 1/SB 381, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia First Informer Broadcasters Act.'"

38-3-58. "Essentials" defined; system to facilitate transport and distribution; certification.

(a) As used in this Code section, the term "essentials" means goods that are consumed or used as a direct result of a state of emergency declared by the Governor or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

(b) Notwithstanding Code Section 38-3-56, the Georgia Emergency Management and Homeland Security Agency shall establish a state-wide system to facilitate the transport and distribution of essentials in commerce during a state of emergency declared by the Governor for the purpose of meeting the needs of the residents of this state during such an emergency and to ensure the continuing economic resilience of communities impacted by such an emergency.

(c) In conformance with subsection (b) of this Code section, such system shall provide for a certification of organizations and business entities that facilitate, or are likely to facilitate, the transport or distribution of essentials where such certification shall apply to all employees or agents of such organizations and business entities who, as designated by such organizations and business entities, are employed to facilitate the transport or distribution of essentials. In providing for such certification, the Georgia Emergency Management and Homeland Security Agency:

(1) May provide for a preemergency or postemergency certification;

(2) May rely on information provided for by bona fide employers in this state about the jobs performed by their employees relating to essentials;

(3) Shall create easily recognizable indicia of certification to assist the efforts of local officials in determining the employees and agents of such organizations and business entities which are certified pursuant to this Code section; and

(4) May provide for an electronic certification process and an electronic distribution of the recognizable indicia of certification.

(d) Except as provided for in this Code section, the Georgia Emergency Management and Homeland Security Agency shall not require any organization, business entity, or individual to obtain any additional certification or to fulfill any additional requirement to transport or distribute essentials in commerce during a state of emergency declared by the Governor.

(e) Notwithstanding any established curfew, a designated employee or agent of an organization or business entity certified pursuant to this Code section may enter or remain in a curfew area beyond the restrictions of the curfew for the limited purpose of facilitating the transport or distribution of essentials. Nothing in this Code section shall be construed to prohibit the Georgia Emergency Management and Homeland Security Agency or local officials from specifying a permissible route of ingress or egress or from denying access to an area in order to preserve, protect, or sustain the life, health, safety, or economic well-being of a person or property or from granting access as otherwise deemed necessary.

(f)(1) The Georgia Emergency Management and Homeland Security Agency may suspend or revoke certification granted pursuant to this Code section as a result of any violation or abuse of this certification. If the suspension is based on a reported violation or abuse, the Georgia Emergency Management and Homeland Security Agency shall investigate the reported violation or abuse in a timely manner.

(2) If the Georgia Emergency Management and Homeland Security Agency suspends or revokes a certification, such agency shall communicate the cause of the suspension or revocation to the certified organization or business entity as provided for in subsection (c) of this Code section. If the suspension is based on a reported violation, the Georgia Emergency Management and Homeland Security Agency shall investigate the reported violation in a timely manner to determine whether the reported violation occurred. (Code 1981, § 38-3-58, enacted by Ga. L. 2017, p. 740, § 1/HB 405.)

Effective date. — This Code section became effective July 1, 2017.

Law reviews. — For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

ARTICLE 4

RECOGNITION OF EMERGENCY MEDICAL SERVICES PERSONNEL LICENSURE INTERSTATE COMPACT

Effective date. — This article became effective July 1, 2017.

Editor's notes. — Section 14 of the compact provides that the "compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state." As of May 8, 2017, the tenth member state enacted the compact into law. The former article consisted of Code Sections 38-3-70 through 38-3-73, relating to emergency management, and was based on Ga. L. 1973, p. 459, §§ 1, 2; Ga. L. 1975, p. 1186, § 1; Ga. L. 1982, p. 3, § 38; Code 1981, § 38-3-73, enacted by Ga. L. 1996, p. 497, § 1, and was repealed on March 1, 2002, pursuant to former Code Section 38-3-73.

38-3-70. Short title.

This article shall be known and may be cited as the "Recognition of Emergency Medical Services Personnel Licensure Interstate Compact (REPLICA)." (Code 1981, § 38-3-70, enacted by Ga. L. 2017, p. 364, § 1/SB 109; Ga. L. 2018, p. 1112, § 38/SB 365.)

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, substituted "cited as" for "referred to as" in this Code section.

38-3-71. Text of compact.

Section 1. Purpose.

In order to protect the public through verification of competency and ensure accountability for patient care related activities all states license emergency medical services (EMS) personnel, such as emergency medical technicians (EMTs), advanced EMTs, and paramedics. This Compact is intended to facilitate the day-to-day movement of EMS personnel across state boundaries in the performance of their EMS duties as assigned by an appropriate authority and authorize state EMS offices to afford immediate legal recognition to EMS personnel licensed in a member state. This Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of EMS personnel and that such state regulation shared among the member states will best protect public health and safety. This Compact is designed to achieve the following purposes and objectives:

(1) Increase public access to EMS personnel;

(2) Enhance the states' ability to protect the public's health and safety, especially patient safety;

(3) Encourage the cooperation of member states in the areas of EMS personnel licensure and regulation;

(4) Support licensing of military members who are separating from an active duty tour and their spouses;

(5) Facilitate the exchange of information between member states regarding EMS personnel licensure, adverse action, and significant investigatory information;

(6) Promote compliance with the laws governing EMS personnel practice in each member state; and

(7) Invest all member states with the authority to hold EMS personnel accountable through the mutual recognition of member state licenses.

Section 2. Definitions.

In this compact:

(A) "Advanced Emergency Medical Technician (AEMT)" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

(B) "Adverse Action" means: any administrative, civil, equitable, or criminal action permitted by a state's laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring, or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions, and state court judgments enforcing adverse actions by the state EMS authority.

(C) "Alternative program" means: a voluntary, non-disciplinary substance abuse recovery program approved by a state EMS authority.

(D) "Certification" means: the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.

(E) "Commission" means: the national administrative body of which all states that have enacted the compact are members.

(F) "Emergency Medical Technician (EMT)" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

(G) "Home State" means: a member state where an individual is licensed to practice emergency medical services.

(H) "License" means: the authorization by a state for an individual to practice as an EMT, AEMT, paramedic, or a level in between EMT and paramedic.

(I) "Medical Director" means: a physician licensed in a member state who is accountable for the care delivered by EMS personnel.

(J) "Member State" means: a state that has enacted this compact.

(K) "Paramedic" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

(L) "Privilege to Practice" means: an individual's authority to deliver emergency medical services in remote states as authorized under this compact.

(M) "Remote State" means: a member state in which an individual is not licensed.

(N) "Restricted" means: the outcome of an adverse action that limits a license or the privilege to practice.

(O) "Rule" means: a written statement by the interstate Commission promulgated pursuant to Section 12 of this compact that is of general applicability; implements, interprets, or prescribes a policy or provision of the compact; or is an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.

(P) "Scope of Practice" means: defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.

(Q) "Significant Investigatory Information" means:

(1) Investigative information that a state EMS authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or

(2) Investigative information that indicates that the individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.

(R) "State" means: means any state, commonwealth, district, or territory of the United States.

(S) "State EMS Authority" means: the board, office, or other agency with the legislative mandate to license EMS personnel.

Section 3. Home State Licensure.

(A) Any member state in which an individual holds a current license shall be deemed a home state for purposes of this compact.

(B) Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.

(C) A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

(1) Currently requires the use of the National Registry of Emergency Medical Technicians (NREMT) examination as a condition of issuing initial licenses at the EMT and paramedic levels;

(2) Has a mechanism in place for receiving and investigating complaints about individuals;

(3) Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding an individual;

(4) No later than five years after activation of the Compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with US CFR § 731.202 and submit documentation of such as promulgated in the rules of the Commission; and

(5) Complies with the rules of the Commission.

Section 4. Compact Privilege to Practice.

(A) Member states shall recognize the privilege to practice of an individual licensed in another member state that is in conformance with Section 3.

(B) To exercise the privilege to practice under the terms and provisions of this compact, an individual must:

(1) Be at least 18 years of age;

(2) Possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state recognized and licensed level with a scope of practice and authority between EMT and paramedic; and

(3) Practice under the supervision of a medical director.

(C) An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the Commission.

(D) Except as provided in subsection (C) of this section, an individual practicing in a remote state will be subject to the remote state's authority and laws. A remote state may, in accordance with

due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action it shall promptly notify the home state and the Commission.

(E) If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

(F) If an individual's privilege to practice in any remote state is restricted, suspended, or revoked the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

Section 5. Conditions of Practice in a Remote State.

An individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the Commission, and under the following circumstances:

(1) The individual originates a patient transport in a home state and transports the patient to a remote state;

(2) The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;

(3) The individual enters a remote state to provide patient care and/or transport within that remote state;

(4) The individual enters a remote state to pick up a patient and provide care and transport to a third member state; or

(5) Other conditions as determined by rules promulgated by the Commission.

Section 6. Relationship to Emergency Management Assistance Compact.

Upon a member state's governor's declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact (EMAC), all relevant terms and provisions of EMAC shall apply and to the extent any terms or provisions of this Compact conflicts with EMAC, the terms of EMAC shall prevail with respect to any individual practicing in the remote state in response to such declaration.

Section 7. Veterans, Service Members Separating from Active Duty Military, and Their Spouses.

(A) Member states shall consider a veteran, active military service member, and member of the National Guard and Reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted NREMT certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.

(B) Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the National Guard and Reserves separating from an active duty tour, and their spouses.

(C) All individuals functioning with a privilege to practice under this Section remain subject to the Adverse Actions provisions of Section 8.

Section 8. Adverse Actions.

(A) A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.

(B) If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

(1) All home state adverse action orders shall include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from both the home state and remote state's EMS authority.

(2) An individual currently subject to adverse action in the home state shall not practice in any remote state without prior written authorization from both the home state and remote state's EMS authority.

(C) A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the Commission in accordance with the rules of the Commission.

(D) A remote state may take adverse action on an individual's privilege to practice within that state.

(E) Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.

(F) A home state's EMS authority shall investigate and take appropriate action with respect to reported conduct in a remote state

as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.

(G) Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

Section 9. Additional Powers Invested in a Member State's EMS Authority.

A member state's EMS authority, in addition to any other powers granted under state law, is authorized under this compact to:

(1) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a member state's EMS authority for the attendance and testimony of witnesses, and/or the production of evidence from another member state, shall be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state EMS authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

(2) Issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

Section 10. Establishment of the Interstate Commission for EMS Personnel Practice.

(A) The Compact states hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice.

(1) The Commission is a body politic and an instrumentality of the Compact states.

(2) Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

(B) Membership, Voting, and Meetings

(1) Each member state shall have and be limited to one (1) delegate. The responsible official of the state EMS authority or his or her designee shall be the delegate to this Compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the member state in which the vacancy exists. In the event that more than one board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the Governor of the state will determine which entity will be responsible for assigning the delegate.

(2) Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(3) The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 12.

(5) The Commission may convene in a closed, non-public meeting if the Commission must discuss:

(a) Non-compliance of a member state with its obligations under the Compact;

(b) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees, or other matters related to the Commission's internal personnel practices and procedures;

(c) Current, threatened, or reasonably anticipated litigation;

(d) Negotiation of contracts for the purchase or sale of goods, services, or real estate;

(e) Accusing any person of a crime or formally censuring any person;

(f) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(g) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(h) Disclosure of investigatory records compiled for law enforcement purposes;

(i) Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(j) Matters specifically exempted from disclosure by federal or member state statute.

(6) If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

(C) The Commission shall, by a majority vote of the delegates, prescribe bylaws and/or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Commission;

(2) Providing reasonable standards and procedures:

(a) For the establishment and meetings of other committees; and

(b) Governing any general or specific delegation of any authority or function of the Commission;

(3) Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals,

and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed;

(4) Establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the Commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any member state, the bylaws shall exclusively govern the personnel policies and programs of the Commission;

(6) Promulgating a code of ethics to address permissible and prohibited activities of Commission members and employees;

(7) Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

(8) The Commission shall publish its bylaws and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the member states, if any.

(9) The Commission shall maintain its financial records in accordance with the bylaws.

(10) The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

(D) The Commission shall have the following powers:

(1) The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;

(2) To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state EMS authority or other regulatory body responsible for EMS personnel licensure to sue or be sued under applicable law shall not be affected;

(3) To purchase and maintain insurance and bonds;

(4) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

(5) To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(6) To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

(7) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

(8) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(9) To establish a budget and make expenditures;

(10) To borrow money;

(11) To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(12) To provide and receive information from, and to cooperate with, law enforcement agencies;

(13) To adopt and use an official seal; and

(14) To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of EMS personnel licensure and practice.

(E) Financing of the Commission

(1) The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(3) The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission

and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

(4) The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(5) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

(F) Qualified Immunity, Defense, and Indemnification

(1) The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(3) The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Section 11. Coordinated Database.

(A) The Commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.

(B) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the coordinated database on all individuals to whom this compact is applicable as required by the rules of the Commission, including:

(1) Identifying information;

(2) Licensure data;

(3) Significant investigatory information;

(4) Adverse actions against an individual's license;

(5) An indicator that an individual's privilege to practice is restricted, suspended or revoked;

(6) Non-confidential information related to alternative program participation;

(7) Any denial of application for licensure, and the reason(s) for such denial; and

(8) Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

(C) The coordinated database administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.

(D) Member states contributing information to the coordinated database may designate information that may not be shared with the public without the express permission of the contributing state.

(E) Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member

state contributing the information shall be removed from the coordinated database.

Section 12. Rulemaking.

(A) The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(B) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any member state.

(C) Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

(D) Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

(1) On the website of the Commission; and

(2) On the website of each member state EMS authority or the publication in which each state would otherwise publish proposed rules.

(E) The Notice of Proposed Rulemaking shall include:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(2) The text of the proposed rule or amendment and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

(F) Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(G) The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(1) At least twenty-five (25) persons;

(2) A governmental subdivision or agency; or

(3) An association having at least twenty-five (25) members.

(H) If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

(1) All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

(4) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

(I) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

(J) The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(K) If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

(L) Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective

date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety, or welfare;

(2) Prevent a loss of Commission or member state funds;

(3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(4) Protect public health and safety.

(M) The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

Section 13. Oversight, Dispute Resolution, and Enforcement.

(A) Oversight

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Commission.

(3) The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

(B) Default, Technical Assistance, and Termination

(1) If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities

under this compact or the promulgated rules, the Commission shall:

(a) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

(b) Provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(4) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the Commission and the defaulting state.

(6) The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(C) Dispute Resolution

(1) Upon request by a member state, the Commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.

(2) The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(D) Enforcement

(1) The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

Section 14. Date of Implementation of the Interstate Commission for EMS Personnel Practice and Associated Rules, Withdrawal, and Amendment.

(A) The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(B) Any state that joins the compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the compact becomes law in that state.

(C) Any member state may withdraw from this compact by enacting a statute repealing the same.

(1) A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

(2) Withdrawal shall not affect the continuing requirement of the withdrawing state's EMS authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(D) Nothing contained in this compact shall be construed to invalidate or prevent any EMS personnel licensure agreement or

other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this compact.

(E) This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

Section 15. Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of EMS agencies. (Code 1981, § 38-3-71, enacted by Ga. L. 2017, p. 364, § 1/SB 109; Ga. L. 2018, p. 1112, § 38/SB 365.)

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, revised punctuation in the middle of paragraph (F)(3) of Section 10.

ARTICLE 9

GEORGIA EMERGENCY MANAGEMENT AND HOMELAND SECURITY AGENCY NOMENCLATURE ACT

38-3-140. Short title.

This article shall be known and may be cited as the "Georgia Emergency Management and Homeland Security Agency Nomenclature Act of 2008." (Code 1981, § 38-3-140, enacted by Ga. L. 2008, p. 543, § 1/HB 1201; Ga. L. 2016, p. 91, § 12/SB 416.)

The 2016 amendment, effective July 1, 2016, inserted "and Homeland Security" in the middle of this Code section.

38-3-141. Definitions.

As used in this article, the term:

(1) "Badge" means any official badge, identification card, or security pass used by members of the Georgia Emergency Management and Homeland Security Agency, either in the past or currently.

(2) "Director" means the director of the Georgia Emergency Management and Homeland Security Agency.

(3) "Emblem" means any official patch or other emblem worn currently or formerly or used by the Georgia Emergency Management and Homeland Security Agency to identify the agency, a division of the agency, or employees of the agency.

(4) "Person" means any person, corporation, organization, or political subdivision of the State of Georgia.

(5) "Seal" means any official symbol, mark, or abbreviation which represents and is used, currently or in the past, by the Georgia Emergency Management and Homeland Security Agency or any other division or operation under the command of the Georgia Emergency Management and Homeland Security Agency to identify the agency, a division of the agency, or employees of the agency.

(6) "Willful violator" means any person who knowingly violates the provisions of this article. Any person who violates this article after being advised in writing by the director that such person's activity is in violation of this article shall be considered a willful violator and shall be considered in willful violation of this article. Any person whose agent or representative is a willful violator and who has knowledge of the violation by the agent or representative shall also be considered a willful violator and in willful violation of this article unless, upon learning of the violation, he or she immediately terminates the agency or other relationship with such violator. (Code 1981, § 38-3-141, enacted by Ga. L. 2008, p. 543, § 1/HB 1201; Ga. L. 2016, p. 91, § 13/SB 416.)

The 2016 amendment, effective July 1, 2016, inserted "and Homeland Security" throughout this Code section.

38-3-142. Use of agency name without written permission prohibited in certain circumstances.

Whoever, except with the written permission of the director, knowingly uses the words "Georgia Emergency Management Agency," "Georgia Homeland Security Agency," "Emergency Management Agency," "Homeland Security Agency," "GEMA," "GEMHSA," or "GEMA/HS" in referring to Georgia's Emergency Management and Homeland Security Agency in connection with any advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by or associated with the Georgia Emergency Management and Homeland Security Agency shall be in violation of this article. (Code 1981, § 38-3-142, enacted by Ga. L. 2008, p. 543, § 1/HB 1201; Ga. L. 2016, p. 91, § 14/SB 416.)

The 2016 amendment, effective July 1, 2016, substituted "'Georgia Homeland Security Agency,' 'Emergency Management Agency,' 'Homeland Security Agency,' 'GEMA,' 'GEMHSA,' or 'GEMA/HS' in referring to Georgia's Emergency Management and Homeland Security" for "'Emergency Management Agency,' or 'GEMA' in referring to Georgia's Emergency Management" near the beginning and inserted "and Homeland Security" near the end of this Code section.

38-3-143. Use or display of agency symbols without written permission prohibited.

Any person who uses or displays any symbol, including any emblem, seal, or badge, current or historical, used by the Georgia Emergency Management and Homeland Security Agency without written permission from the director shall be in violation of this article. (Code 1981, § 38-3-143, enacted by Ga. L. 2008, p. 543, § 1/HB 1201; Ga. L. 2016, p. 91, § 15/SB 416.)

The 2016 amendment, effective July 1, 2016, inserted "and Homeland Security" in the middle of this Code section.

38-3-144. Requests for permission; grants of permission at director's discretion.

Any person seeking permission to use or display the nomenclature or symbols of the Georgia Emergency Management and Homeland Security Agency may request such permission in writing to the director. The director shall serve notice on the requesting party within 15 calendar days after receipt of the request of his or her decision on whether the person may use the nomenclature or the symbol. If the director does not respond within the 15 day time period, then the request is presumed to have been denied. The grant of permission under this article shall be at the discretion of the director and under such conditions as the director may impose. (Code 1981, § 38-3-144, enacted by Ga. L. 2008, p. 543, § 1/HB 1201; Ga. L. 2016, p. 91, § 16/SB 416.)

The 2016 amendment, effective July 1, 2016, inserted "and Homeland Security" in the first sentence.

ARTICLE 10

STATE-WIDE FIRST RESPONDER BUILDING MAPPING INFORMATION SYSTEM

38-3-151. Definitions.

As used in this article, the term:

(1) "Agency" means the Georgia Emergency Management and Homeland Security Agency established by Code Section 38-3-20.

(2) "Building mapping information system" means a state-wide informational system containing maps of designated public buildings.

(3) "Director" means the director of the agency. (Code 1981, § 38-3-151, enacted by Ga. L. 2008, p. 564, § 1/SB 33; Ga. L. 2016, p. 91, § 17/SB 416.)

The 2016 amendment, effective July 1, 2016, inserted "and Homeland Security" in paragraph (1).

38-3-152. Creation and operation of building mapping information system; availability to government agencies; rules and regulations; federal funding sources; exemption of information from public disclosure; recommendations for training guidelines; limitations.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

ARTICLE 11

UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT

Effective date. — This article became effective July 1, 2016.

38-3-160. Uniform Emergency Volunteer Health Practitioners Act.

This article shall be known and may be cited as the "Uniform Emergency Volunteer Health Practitioners Act." (Code 1981, § 38-3-160, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

Law reviews. — For article, "Lurching from Complacency to Panic in the Fight Against Dangerous Microbes: A Blueprint for a Common Secure Future," see 67 Emory L.J. 337 (2018).

38-3-161. Definitions.

As used in this article, the term:

(1) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(2) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health services or veterinary services provided by volunteer health practitioners and that:

(A) Is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or the Georgia Emergency Management and Homeland Security Agency; or

(B) Regularly plans and conducts its activities in coordination with an agency of the federal government, the Department of Public Health, a local emergency management agency, a local public health district, or the Georgia Emergency Management and Homeland Security Agency.

(3) "Emergency" means an event or condition that is deemed a state of emergency or disaster under Code Section 38-3-51, a public health emergency under Code Section 31-12-1.1, a local emergency under Code Section 36-69-2, or an emergency declared by a state entity or official or by a federal entity or official, if such emergency includes the State of Georgia, under any other provision of Georgia or federal law.

(4) "Emergency declaration" means a state of emergency or disaster declared by the Governor pursuant to Code Section 38-3-51 or other applicable law or laws.

(5) "Emergency Management Assistance Compact" means the interstate compact approved by the United States Congress by Public Law No. 104-321,110 Stat. 3877 and enacted in this state as Article 5 of this chapter.

(6) "Entity" means a person other than an individual.

(7) "Health facility" means a hospital or other health facility licensed under Chapter 7 of Title 31, a veterinary facility as defined in Code Section 43-50-3, or any other similar entity licensed under the laws of another state to provide health services or veterinary services.

(8) "Health practitioner" means an individual licensed under the laws of this or another state to provide health services or veterinary services.

(9) "Health services" means the provision of treatment, care, advice, or guidance, or other services or supplies, related to the health or death of individuals or human populations to the extent necessary to respond to an emergency, including:

(A) The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(i) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) Counseling, assessment, procedures, or other services;

(B) The sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(C) Funeral, cremation, cemetery, or other mortuary services.

(10) "Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.

(11) "License" means authorization by a state to engage in health services or veterinary services that are unlawful without such authorization. The term includes authorization under the laws of this state to an individual to provide health services or veterinary services based upon a national certification issued by a public or private entity.

(12) "Person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.

(14) "Scope of practice" means the extent of the authorization to provide health services or veterinary services granted to a health practitioner by a license issued to such health practitioner in the state in which the principal part of such health practitioner's services are rendered, including any conditions imposed by the licensing authority.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Veterinary services" means the provision of treatment, care, advice, or guidance, or other services or supplies, related to the health or death of an animal or to animal populations to the extent necessary to respond to an emergency, including:

(A) The diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccines, medicine, surgery, or therapy;

(B) The use of a procedure for reproductive management; and

(C) The monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(17) "Volunteer health practitioner" means a health practitioner who provides health services or veterinary services pursuant to this article at no charge to the patients receiving such services, so long as such health practitioner does not receive compensation in direct relation to those specific services. The term "volunteer health practitioner" shall not include a health practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires such health practitioner to provide such health services to patients of such host entity or affiliate, unless such health practitioner is not a resident of this state and is employed by a disaster relief organization providing health services in this state while an emergency declaration is in effect. (Code 1981, § 38-3-161, enacted by Ga. L. 2016, p. 296, § 1/SB 230; Ga. L. 2018, p. 770, § 5/HB 956.)

The 2018 amendment, effective July 1, 2018, deleted "paragraph (16) of" preceding "Code Section 43-50-3" in the middle of paragraph (7).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "and Homeland Security" was inserted after "Georgia Emergency Management" in subparagraphs (2)(A) and (2)(B).

38-3-162. Applicability to volunteer health practitioners.

This article shall only apply to volunteer health practitioners registered with a registration system that complies with Code Section 38-3-164 and who provide health services or veterinary services in this state for a host entity while an emergency declaration is in effect. (Code 1981, § 38-3-162, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

38-3-163. Regulation of volunteer health practitioners during an emergency.

(a) For health services and veterinary services provided by volunteer health practitioners pursuant to this article while an emergency declaration is in effect, the Governor may waive, limit, restrict, or otherwise regulate:

(1) The duration of practice by such volunteer health practitioners with respect to such services;

(2) The geographical areas in which such volunteer health practitioners may practice with respect to such services;

(3) The types of volunteer health practitioners who may practice with respect to such services; and

(4) Any other matters necessary

to coordinate effectively the provision of health services or veterinary services during the emergency.

(b) An order issued pursuant to subsection (a) of this Code section may take effect immediately, without prior notice or comment, and shall not be a rule within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) A host entity that uses volunteer health practitioners to provide health services or veterinary services in this state shall:

(1) Consult and coordinate its activities with the Georgia Emergency Management and Homeland Security Agency, consistent with the Georgia Emergency Operations Plan, to provide for the efficient and effective use of volunteer health practitioners; and

(2) Comply with the laws of this state relating to the management of emergency health services or veterinary services. (Code 1981, § 38-3-163, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "and Homeland Security" was inserted after "Georgia Emergency Management" in paragraph (c)(1).

38-3-164. Registration systems.

(a) To qualify as a volunteer health practitioner registration system, a system shall:

(1) Accept applications for the registration of volunteer health practitioners before or during an emergency;

(2) Include information about the licensure and good standing of health practitioners which is accessible by authorized persons;

(3) Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this article; and

(4) Meet one of the following conditions:

(A) Be an emergency system for advance registration of volunteer health care practitioners established by a state and funded through the United States Department of Health and Human

Services under Section 319I of the Public Health Services Act, 42 U.S.C. Section 247d-7b;

(B) Be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to Section 2801 of the Public Health Services Act, 42 U.S.C. Section 300hh;

(B.1) Be a member of an approved medical reserve corps;

(C) Be operated by a:

(i) Disaster relief organization;

(ii) Licensing board;

(iii) National or regional association of licensing boards or health practitioners;

(iv) Health facility that provides comprehensive inpatient and outpatient health care services, including a tertiary care and teaching hospital; or

(v) Governmental entity; or

(D) Be designated by the Georgia Emergency Management and Homeland Security Agency as a registration system for purposes of this article.

(b) While an emergency declaration is in effect, the Georgia Emergency Management and Homeland Security Agency, consistent with the Georgia Emergency Operations Plan; a person authorized to act on behalf of the Georgia Emergency Management and Homeland Security Agency; or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection (a) of this Code section. Confirmation shall be limited to obtaining the identities of the volunteer health practitioners from the system and determining whether the system indicates that the volunteer health practitioners are licensed and in good standing.

(c) Upon request of a person in this state authorized under subsection (b) of this Code section, or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the volunteer health practitioners are licensed and in good standing.

(d) A host entity shall not be required to use the services of a volunteer health practitioner even if such volunteer health practitioner is registered with a registration system that indicates that such volunteer health practitioner is licensed and in good standing. (Code 1981, § 38-3-164, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "and Homeland Security" was inserted after "Georgia Emergency Management" in subparagraph (a)(4)(D) and in two places in subsection (b).

38-3-165. Recognition of volunteer health practitioners licensed in other states.

(a) While an emergency declaration is in effect, a volunteer health practitioner registered with a registration system that complies with Code Section 38-3-164 and who is licensed and in good standing in the state upon which such volunteer health practitioner's registration is based may practice in this state to the extent authorized by this article as if such volunteer health practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under subsection (a) of this Code section shall not be entitled to the protections of this article if such volunteer health practitioner is licensed in more than one state and any license of such volunteer health practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction. (Code 1981, § 38-3-165, enacted by Ga. L. 2016, p. 296, § 1/SB 230; Ga. L. 2017, p. 774, § 38/HB 323.)

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised capitalization in subsection (b).

38-3-166. Credentialing or privileging standards of health facilities.

This article shall not affect credentialing or privileging standards of a health facility and shall not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect. (Code 1981, § 38-3-166, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

38-3-167. Limitation on services provided.

(a) Except as otherwise provided in this Code section, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed volunteer health practitioner established by the licensing provisions, practice acts, or other laws of this state.

(b) Except as otherwise provided in this article, this article shall not authorize a volunteer health practitioner to provide services that are outside such volunteer health practitioner's scope of practice, even if a similarly licensed volunteer health practitioner in this state would be permitted to provide such services.

(c) A host entity may restrict the health services or veterinary services that a volunteer health practitioner may provide pursuant to this article.

(d) A volunteer health practitioner shall not be considered to be engaging in unauthorized practice unless such volunteer health practitioner has reason to know of any limitation, modification, or restriction under this Code section or that a similarly licensed volunteer health practitioner in this state would not be permitted to provide such services. A volunteer health practitioner has reason to know of a limitation, modification, or restriction under this Code section or that a similarly licensed volunteer health practitioner in this state would not be permitted to provide a service if:

(1) The volunteer health practitioner knows the limitation, modification, or restriction exists or that a similarly licensed volunteer health practitioner in this state would not be permitted to provide such service; or

(2) From all the facts and circumstances known to the volunteer health practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed volunteer health practitioner in this state would not be permitted to provide such service.

(e) In addition to the authority granted by the laws of this state other than this article to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) May impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) May impose administrative sanctions upon a health practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) Shall report any administrative sanctions imposed upon a health practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which such health practitioner is known to be licensed.

(f) In determining whether to impose administrative sanctions under subsection (e) of this Code section, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the health practitioner's scope of practice, education, training, experience, and specialized skill. (Code 1981, § 38-3-167, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

38-3-168. Construction with other provisions; inclusion.

(a) This article shall not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this

article. Except as otherwise provided in subsection (b) of this Code section, this article shall not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

(b) The Georgia Emergency Management and Homeland Security Agency, pursuant to the Emergency Management Assistance Compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state. (Code 1981, § 38-3-168, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "and Homeland Security" was inserted after "Georgia Emergency Management" in subsection (b).

38-3-169. Regulatory authority.

The Department of Public Health may promulgate rules and regulations to implement this article. In doing so, the Department of Public Health shall consult with and consider the recommendations of the Georgia Emergency Management and Homeland Security Agency, consistent with the Georgia Emergency Operations Plan, and shall also consult with and consider rules and regulations promulgated by similarly empowered agencies in other states to promote uniformity of application of this article and make the emergency response systems in the various states reasonably compatible. (Code 1981, § 38-3-169, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "and Homeland Security" was inserted after "Georgia Emergency Management".

38-3-170. Liability of volunteer health practioners.

(a) Except as provided in subsection (c) of this Code section, a volunteer health practitioner who provides health services or veterinary services pursuant to this article shall not be liable for damages for his or her act or omission in providing such health services or veterinary services.

(b) No person shall be vicariously liable for damages for an act or omission of a volunteer health practitioner if such volunteer practitioner is not liable for the damages under subsection (a) of this Code section.

(c) This Code section shall not limit the liability of a volunteer health practitioner for:

(1) Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;

(2) An intentional tort;

(3) Breach of contract;

(4) A claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the volunteer health practitioner; or

(5) An act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

(d) A person that, pursuant to this article, operates, uses, or relies upon information provided by a volunteer health practitioner registration system shall not be liable for damages for an act or omission relating to that operation, use, or reliance unless such act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

(e) In addition to the protections provided in subsection (a) of this Code section, a volunteer health practitioner who provides health services or veterinary services pursuant to this article shall be entitled to all the rights, privileges, or immunities which may otherwise be provided by law. (Code 1981, § 38-3-170, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

38-3-171. Uniformity.

In applying and construing this uniform Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (Code 1981, § 38-3-171, enacted by Ga. L. 2016, p. 296, § 1/SB 230.)

ARTICLE 12

EMERGENCY COMMUNICATIONS AUTHORITY

Effective date. — This article becomes effective January 1, 2019. See the Editor's notes.

Editor's notes. — Ga. L. 2018, p. 689, § 4-1/HB 751, not codified by the General Assembly, provides that: "(a) This Act shall become effective July 1, 2018, for the purposes of creating the Georgia Emergency Communications Authority and appointing the members thereof and the enactment of Section 2-11 and the provisions regarding billing practices contained in subsection (d) of Code Section 38-3-189. For all other purposes, this Act shall become effective on January 1, 2019.

"(b) The provisions of this Act shall not in any manner diminish, extinguish, reduce, or affect any cause of action for audits, services, or the recovery of funds from service providers which may have existed prior to January 1, 2019. Any such cause of action is expressly preserved."

38-3-180. (Effective January 1, 2019) Short title.

This article shall be known and may be cited as the "Georgia Emergency Communications Authority Act." (Code 1981, § 38-3-180, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-181. (Effective January 1, 2019) Definitions.

As used in this article, the term:

(1) "Authority" means the Georgia Emergency Communications Authority established pursuant to Code Section 38-3-182.

(2) "Board of directors" or "board" means the governing body of the authority.

(3) "Emergency 9-1-1 system" or "9-1-1 system" has the same meaning as provided in Code Section 46-5-122.

(4) "Enhanced ZIP Code" has the same meaning as provided in Code Section 46-5-122.

(5) "Local government" means a county, municipality, regional authority, or consolidated government in this state that operates or contracts for the operation of a public safety answering point and has adopted a resolution or ordinance pursuant to Code Section 46-5-133 to impose 9-1-1 charges under Code Section 46-5-134.

(6) "Next Generation 9-1-1" or "NG911" is a secure, nationwide, interoperable, standards-based, all Internet protocol emergency communications infrastructure enabling end-to-end transmission of all types of data, including, but not limited to, voice and multimedia communications from the public to a public safety answering point.

(7) "9-1-1 charge" has the same meaning as provided in Code Section 46-5-122.

(8) "Public safety answering point" has the same meaning as provided in Code Section 46-5-122.

(9) "Service supplier" has the same meaning as provided in Code Section 46-5-122.

(10) "Telephone subscriber" has the same meaning as provided in Code Section 46-5-122.

(11) "Wireless enhanced 9-1-1 charge" has the same meaning as provided in Code Section 46-5-122. (Code 1981, § 38-3-181, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-182. (Effective January 1, 2019) Establishment of Georgia Emergency Communications Authority; purpose; duties and responsibilities; board of directors; perpetual existence; power and authority; operation; regulation.

(a)(1) There is established the Georgia Emergency Communications Authority as a body corporate and politic, an instrumentality of the state, and a public corporation, and by that name the authority may contract and be contracted with and defend and bring actions, including, but not limited to, a private right of action to enforce this article. The authority shall be an entity within the Georgia Emergency Management and Homeland Security Agency and attached to said agency for all operational purposes.

(2) All local governments as of July 1, 2018, shall be members of the authority. Additional local governments shall become members upon adoption of a resolution or ordinance to impose the monthly 9-1-1 charge as authorized by Code Section 46-5-133 and contingent upon approval by the authority which shall not be unreasonably withheld. Any local government member of the authority that ceases operating or contracting for the operation of a public safety answering point shall withdraw from the authority subject to the terms of any contract, obligation, or agreement with the authority.

(b) The primary purpose of the authority shall be to administer, collect, audit, and remit 9-1-1 revenues for the benefit of local governments, as specified in this article, and on such terms and conditions as may be determined to be in the best interest of the operation of local governments in light of the following factors:

(1) The public interest in providing cost-efficient collection of revenues;

(2) Increasing compliance in collection of revenues;

(3) Easing the administrative burden on vendors and service suppliers; and

(4) Such other factors as are in the public interest and welfare of the citizens of Georgia.

(c) In addition to the purposes specified in subsection (b) of this Code section, the authority shall have the duties and responsibilities to:

(1) Apply for, receive, and use federal grants or state grants or both;

(2) Study, evaluate, and recommend technology standards for the regional and state-wide provision of a public safety communications network and 9-1-1 system;

(3) Identify any changes necessary to accomplish more effective and efficient 9-1-1 service across this state including consolidation and interoperability of 9-1-1 systems;

(4) Identify any changes necessary in the assessment and collection of fees under Part 4 of Article 2 of Chapter 5 of Title 46;

(5) Develop, offer, or make recommendations to the Georgia Public Safety Training Center, Georgia Peace Officer Standards and Training Council, and other state agencies as to training that should be provided to telecommunicators, trainers, supervisors, and directors of public safety answering points;

(6) Recommend minimum standards for operation of public safety answering points;

(7) Collect data and statistics regarding the performance of public safety answering points; and

(8) Identify any necessary changes or enhancements to develop and deploy NG911 statewide.

(d)(1) Control and management of the authority shall be vested in a board of directors which shall consist of the following:

(A) The commissioner of the Department of Public Safety or his or her designee;

(B) The commissioner of the Department of Revenue or his or her designee;

(C) The director of the Georgia Public Safety Training Center or his or her designee;

(D) Three members appointed by the Governor who shall be 9-1-1 directors, each of whom shall be currently employed by a public safety answering point. The Georgia 9-1-1 Directors Association, the Georgia Chapter of the Association of Public Safety Communications Officials, and the Georgia Chapter of the National Emergency Number Association may provide recommendations to the Governor for such appointments;

(E) One member appointed by the Governor who shall be an elected member of a county governing authority that operates or contracts for the operation of a public safety answering point. The Association County Commissioners of Georgia may provide recommendations to the Governor for such appointment;

(F) One member appointed by the Governor who shall be a county manager, county administrator, or finance officer from a county that operates or contracts for the operation of a public safety answering point. The Association County Commissioners of Georgia may provide recommendations to the Governor for such appointment;

(G) One member appointed by the Governor who shall be an elected member of a city governing authority that operates or contracts for the operation of a public safety answering point. The Georgia Municipal Association may provide recommendations to the Governor for such appointment;

(H) One member appointed by the Governor who shall be a city manager, city administrator, or finance officer from a city that operates or contracts for the operation of a public safety answering point. The Georgia Municipal Association may provide recommendations to the Governor for such appointment;

(I) Two members from the telecommunications industry who shall be appointed by the Governor;

(J) One member appointed by the Governor who is a sheriff responsible for managing a public safety answering point. The Georgia Sheriffs' Association may provide recommendations to the Governor for such appointment;

(K) One police chief appointed by the Governor who is serving a local government. The Georgia Association of Chiefs of Police may provide recommendations to the Governor for such appointment; and

(L) One fire chief appointed by the Governor who is serving a local government. The Georgia Association of Fire Chiefs may provide recommendations to the Governor for such appointment.

(2) The initial term for appointments made pursuant to subparagraphs (D), (E), (F), (G), and (H) of paragraph (1) of this subsection shall be from July 1, 2018, until June 30, 2021. The initial term for appointments made pursuant to subparagraphs (I), (J), (K), and (L) of paragraph (1) of this subsection shall be from July 1, 2018, until June 30, 2020. All subsequent terms shall be for three years. Any vacancies that occur prior to the end of a term shall be filled by appointment in the same manner as the original appointment and shall be for the remainder of the unexpired term.

(3) The board may appoint additional persons to serve in an advisory role to the board. Such advisers shall be nonvoting and shall not be counted in ascertaining if a quorum is present.

(4) Members of the board of directors shall receive no compensation for their services but may be authorized by the authority to receive an expense allowance and reimbursement from funds of the authority in the same manner as provided for in Code Section 45-7-21, but only in connection with the member's physical attendance at a meeting of the board.

(5) Nine members of the board of directors shall constitute a quorum, and the affirmative votes of a majority of a quorum shall be required for any action to be taken by the board.

(6) The executive director of the authority shall convene the initial meeting of the board of the authority no later than September 1, 2018, at which time the board shall elect one of its members as chairperson. In addition, the board shall elect from its membership a vice chairperson and a secretary/treasurer.

(7) The board of directors shall promulgate bylaws and may adopt other procedures for governing its affairs and for discharging its duties as may be permitted or required by law or applicable rules and regulations.

(e) The authority shall have perpetual existence.

(f) The authority through its board of directors shall have the power and authority to:

(1) Have a seal and alter the same at its pleasure;

(2) Make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created;

(3) Acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the purpose of the authority;

(4) Apply for and to accept any gifts or grants, loan guarantees, loans of funds, property, or financial or other aid in any form from the federal government or any agency or instrumentality thereof, from the state government or any agency or instrumentality thereof, or from any other source for any or all purposes specified in this article and to comply, subject to the provisions of this article, with the terms and conditions thereof;

(5) Deposit or otherwise invest funds held by it in any state depository or in any investment that is authorized for the investment of proceeds of state general obligation bonds and to use for its corporate purposes or redeposit or reinvest interest earned on such funds;

(6) Exercise any powers granted by the laws of this state to public or private corporations that are not in conflict with the public purpose of the authority;

(7) Do all things necessary or convenient to carry out the powers conferred by this article and to carry out such duties and activities as are specifically imposed upon the authority by law;

(8) Bring and defend actions;

(9) Provide for the collection of moneys;

(10) Manage, control, and direct proceeds retained under subsection (a) of Code Section 38-3-188 and the expenditures made therefrom;

(11) Distribute the proceeds identified under subsection (b) of Code Section 38-3-188 in such manner and subject to such terms and limitations as provided by such Code section; and

(12) Exercise all other powers necessary for the development and implementation of the duties and responsibilities provided for in this article.

(g) The creation of the authority and the carrying out of its purpose under this article are in all respects for the benefit of the people of this state. The authority shall be carrying out an essential governmental function on behalf of local governments in the exercise of the powers conferred upon it by this article and is, therefore, given the same immunity from liability for carrying out its intended functions as other state officials and employees.

(h) The authority shall not be required to pay taxes or assessments upon any real or personal property acquired under its jurisdiction, control, possession, or supervision.

(i) All moneys received by the authority pursuant to this article shall be deemed to be trust funds to be held and applied solely as provided in this article.

(j) This article, being for the welfare of the state and its inhabitants, shall be liberally construed to affect the purposes thereof.

(k) Notwithstanding any provision of this Code section to the contrary, the authority shall have no jurisdiction concerning the setting of rates, terms, and conditions for the offering of telecommunications services, as defined in Code Section 46-5-162, or for the offering of broadband service, VoIP, or wireless service, as such terms are defined in Code Section 46-5-221.

(l) The board shall be subject to and shall comply with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in the same

manner as an agency as such term is defined in Code Section 50-13-2. The board may promulgate and amend, from time to time, such rules or regulations, consistent with this article and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," as it deems consistent with or required for the public welfare, for the administration of any provision of this article, or for the orderly conduct of the board's affairs. Any claim by the authority that a service supplier has violated any provision of this article shall be adjudicated as a contested proceeding under Code Section 50-13-13 and be subject to judicial review under Code Section 50-13-19. (Code 1981, § 38-3-182, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-183. (Effective January 1, 2019) Appointment of executive director; role; additional staffing.

The director of the Georgia Emergency Management and Homeland Security Agency shall appoint an executive director, subject to approval by the board, who shall be the administrative head of the authority, and shall establish the salary of the executive director. The executive director shall serve at the pleasure of such director. The executive director, with the concurrence and approval of such director, shall hire officers, agents, and employees; prescribe their duties, responsibilities, and qualifications; set their salaries; and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director. (Code 1981, § 38-3-183, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-184. (Effective January 1, 2019) Role of Attorney General.

The Attorney General shall provide legal services for the authority and, in connection therewith, Code Sections 45-15-13 through 45-15-16 shall be fully applicable. (Code 1981, § 38-3-184, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-185. (Effective January 1, 2019) Remission of 9-1-1 and enhanced 9-1-1 charges.

(a) Beginning January 1, 2019, all 9-1-1 charges and all wireless enhanced 9-1-1 charges imposed by the governing authority of a local

government pursuant to Code Section 46-5-133 and collected by a service supplier pursuant to Code Sections 46-5-134 and 46-5-134.1 shall be remitted monthly by each service supplier to the authority not later than the twentieth day of the month following the month in which they are collected. Any charges not remitted in a timely manner shall accrue interest at the rate specified in Code Section 48-2-40, until the date they are paid.

(b)(1) Each service supplier collecting and remitting 9-1-1 and wireless enhanced 9-1-1 charges to the authority pursuant to subsection (a) of this Code section shall submit with the remitted charges a report identifying the amount of the charges being collected and remitted from telephone subscribers attributable to each county or municipality that operates a public safety answering point, including counties and municipalities that operate multijurisdictional or regional 9-1-1 systems or have created a joint authority pursuant to Code Section 46-5-138.

(2) For purposes of the monthly report required in paragraph (1) of this subsection, the service supplier shall attempt to utilize enhanced ZIP Codes. If an enhanced ZIP Code designation is not available for an address or if the service supplier is unable to determine the applicable enhanced ZIP Code designation after exercising due diligence to determine the designation, the service supplier may apply the five-digit ZIP Code to that address. For purposes of this subsection, there is a rebuttable presumption that a service supplier has exercised due diligence if the service supplier has attempted to determine the enhanced ZIP Code designation by utilizing software used by the Streamlined Sales Tax Governing Board pursuant to Code Section 48-8-70. (Code 1981, § 38-3-185, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-186. (Effective January 1, 2019) Contracting with Department of Revenue for collection and disbursement of charges remitted and for collection and disbursement of prepaid wireless 9-1-1 charges.

(a) The authority shall contract with the Department of Revenue for the collection and disbursement of charges remitted to the authority under subsection (a) of Code Section 38-3-185, other than prepaid wireless 9-1-1 charges under Code Section 46-5-134.2. Under such nonmonetary contract and to defray the cost of administering such collection and disbursement, the Department of Revenue shall receive payment equal to 1 percent of the total amount of the gross charges remitted to the authority under subsection (a) of Code Section 38-3-185,

other than prepaid wireless 9-1-1 charges under Code Section 46-5-134.2.

(b) The authority shall also contract with the Department of Revenue for the collection and disbursement of prepaid wireless 9-1-1 charges remitted to counties and municipalities under Code Section 46-5-134.2. Under such nonmonetary contract and to defray the cost of administering such collection and disbursement, the Department of Revenue shall receive payment equal to 1 percent of the total amount of the gross charges remitted to the authority or Department of Revenue under Code Section 46-5-134.2. (Code 1981, § 38-3-186, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-187. (Effective January 1, 2019) Planning and implementation of state-wide public safety communications network.

The authority and telecommunications service suppliers shall work in cooperation with the state to plan for and implement a state-wide public safety communications network. (Code 1981, § 38-3-187, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-188. (Effective January 1, 2019) Retention of funds by Department of Revenue; payments to local governments.

(a) The Department of Revenue shall retain from the charges remitted to it pursuant to subsection (a) of Code Section 38-3-185 and pursuant to Code Section 46-5-134.2 an amount equal to 1 percent of the total amount of such charges and remit such amount to the authority.

(b) Except for the amounts retained by the authority, Department of Revenue, and service suppliers pursuant to Code Sections 38-3-186 and 46-5-134 and this Code section, the remainder of the charges remitted by service suppliers shall be paid by the Department of Revenue to each local government on a pro rata basis based on the remitted amounts attributable to each such local government reported by service suppliers in the reports required by subsection (b) of Code Section 38-3-185. Such payments shall be made by the Department of Revenue to such local governments not later than 30 days following the date charges must be remitted by service suppliers to the Department of Revenue

pursuant to subsection (a) of Code Section 38-3-185. Under no circumstances shall such payments be, or be deemed to be, revenues of the state and such payments shall not be subject to or available for appropriation by the state for any purpose. (Code 1981, § 38-3-188, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-189. (For effective date, see note) Audit; penalties for noncompliance; approval of billing practices.

(a)(1) Beginning January 1, 2019, the authority is authorized to employ or contract with an independent auditor or the Department of Revenue to audit the financial and business records of any service supplier offering communication services capable of connecting 9-1-1 service to the extent necessary to ensure proper collection and remittance of charges in accordance with this article and with Part 4 of Article 2 of Chapter 5 of Title 46. If the authority chooses to contract with the Department of Revenue to audit the financial and business records of any service supplier offering communication services capable of connecting 9-1-1 service, the contract shall be nonmonetary and any and all costs associated with the performance of such audits shall be considered paid for by the administrative fee retained by the Department of Revenue under Code Section 38-3-186. Under no circumstances shall the Department of Revenue retain any additional charges for the purpose of conducting such audits. Such audits shall apply only to charges required to be imposed and collected pursuant to Part 4 of Article 2 of Chapter 5 of Title 46 on or after January 1, 2019. Any audits other than those conducted by the Department of Revenue shall be conducted at the authority's sole expense. The Department of Revenue shall provide to the authority access to all of the department's collection data and records of monthly returns of service suppliers under this Code section. Except as provided by Code Section 38-3-190, such data and records shall not be used by the authority for any purpose other than audits under this Code section and shall otherwise retain any confidential status while in the possession of or use by the authority or others retained by the authority.

(2) The board shall develop a schedule for auditing service suppliers according to criteria adopted by the board. Such schedule shall provide for an audit of a service supplier not more than once every three years. Any such audit shall cover a representative sample of the service supplier's customer base in the state.

(3) Any claim by the authority seeking to adjust the amount of any billing, remittance, or charge reported by the service supplier as

required under Code Section 38-3-185 or imposing any penalty shall be limited to a period of three years prior to the date of the initial notice to the service supplier of the audit.

(b) Failure of a service supplier to comply with any audit required under paragraph (2) of subsection (a) of this Code section, when notice of such audit has been duly served upon a service supplier's registered agent, shall result in a civil penalty of not more than $1,000.00 per day for each day the service supplier refuses to comply, commencing on a date certain as stated in such notice, which in no case shall be less than 45 days, unless otherwise agreed in writing by the parties. A good faith attempt by a service supplier to comply with any such audit shall serve as a defense to a claim of failure to comply in any contested proceeding under Code Section 50-13-13 or judicial review under Code Section 50-13-19, and if upheld, there shall be no civil penalty.

(c) Willful failure of any service supplier to have billed the monthly charges under Code Section 38-3-185 or 46-5-134.2 or to have remitted such collected charges as required shall be subject to a civil penalty of not more than $25,000.00 in the aggregate or 3 percent of the amount that should have been remitted, whichever is less. The civil penalty shall be in addition to the amount that should have been remitted and shall accrue interest at the rate specified in Code Section 48-2-40. The remedy set forth in this Code section shall be enforced solely by the authority and shall be the only remedy for any claim against a service supplier for failure to bill or remit the monthly charges under Code Section 38-3-185 or 46-5-134.2.

(d)(1) (For effective date, see note) A service supplier shall not incur any liability, including, but not limited to, liability for the payment of unbilled or unremitted charges, for any billing practice previously or subsequently approved in writing by the authority or otherwise approved pursuant to paragraph (2) of this subsection. A service supplier may request that the authority approve a billing practice by a written request sent to the executive director of the authority by certified mail. The authority may request additional information from the service supplier regarding the billing practice.

(2)(A) The authority shall issue a written decision within 90 days of the executive director's receipt of the service supplier's written request for approval of the billing practice; provided, however, that the authority may, in its discretion, either request additional information or determine that it needs more time, in which case the authority shall provide notice of same to the service supplier and a single additional 90 day period shall commence.

(B) In the event the authority does not issue a written decision within the time period specified under subparagraph (A) of this

paragraph, the billing practice shall be deemed approved pursuant to this subsection.

(3) The written approval of a billing practice under this subsection or the approval of a billing practice under subparagraph (B) of paragraph (2) of this subsection shall not impair or prohibit the board from adopting and implementing subsequently new requirements by rule or regulation that the board deems appropriate which supersede any such prior approved billing practices; provided, however, that in no case shall any approval of a billing practice by the authority be superseded for a period of at least three years following the date of approval. (Code 1981, § 38-3-189, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-190. (Effective January 1, 2019) Confidential nature of information; aggregate complying of data and release; compliance with judicial orders.

(a) Except as otherwise provided in this Code section, all information submitted by a service supplier to the authority or Department of Revenue pursuant to this article shall be presumed to be confidential, proprietary, a trade secret, or subject to exemption from disclosure under state or federal law and shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50. Except as provided in this Code section, such information shall not be released to any person other than to the submitting service supplier, the authority, or auditors or attorneys employed by or under contract with the authority or the Georgia Emergency Management and Homeland Security Agency without the express permission of the submitting service supplier. Members of the authority shall also have access to information for the purpose of determining the accuracy of collections and remittances of individual service suppliers related to the member's jurisdiction. Such information shall be used solely for the purposes stated under this article.

(b) Information collected by the authority and Department of Revenue related to this article and Part 4 of Article 2 of Chapter 5 of Title 46 may be publicly released or published but only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual service supplier. All requests for information shall be submitted to the authority and not directly to the Department of Revenue.

(c) Nothing in this Code section shall prohibit the authority or Department of Revenue from complying with a court order or request of a state or federal grand jury, taxing or regulatory authority, law

enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. (Code 1981, § 38-3-190, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

38-3-191. (Effective January 1, 2019) Limitation on use of funds, rights, and privileges.

All funds, distributions, revenues, grants, appropriations, and rights and privileges of value of every nature accruing to the authority shall be used only for the purpose of developing, maintaining, administering, managing, and promoting the authority, state-wide 9-1-1 advancements, and state-wide public safety communications interoperability and may never be appropriated for any other purpose. (Code 1981, § 38-3-191, enacted by Ga. L. 2018, p. 689, § 1-1/HB 751.)

Editor's notes. — For information as to the effective date of this Code section, see the Editor's notes at the beginning of this article.

CHAPTER 4

VETERANS AFFAIRS

Article 1

Department of Veterans Service

Sec.
38-4-13. Women veterans' office.
38-4-14. Creation of Georgia Veterans Service Foundation, Inc.; purpose; operation; reporting.

Article 2

Veterans Benefits

PART 2

WAR VETERANS HOME

38-4-50. "War veterans" defined.
38-4-55. Admissions and discharges; rules and regulations concerning.

PART 4

RETURNING VETERANS TASK FORCE

38-4-90. Creation.
38-4-91. Membership.
38-4-92. Duties; recommendations.

Cross references. — Creation of veterans court division, § 15-1-17.

ARTICLE 1

DEPARTMENT OF VETERANS SERVICE

38-4-13. Women veterans' office.

The commissioner of veterans service shall, in addition to the other duties provided in this chapter, maintain a women veterans' office. Such office shall conduct outreach to women veterans for the purpose of improving awareness of eligibility for federal and state veterans' benefits and services, conduct assessments of the specific needs of women veterans with respect to benefits and services, and review programs, research projects, and other initiatives designed to address or meet the specific needs of women veterans in this state. The women veterans' office shall work with veterans court divisions as provided for in Code Section 15-1-17 to assist with recruiting and training women veterans to serve as mentors for veterans participating in these court divisions. In the annual report provided for under Code Section 38-4-11, the commissioner of veterans service shall specifically report on the office provided for under this Code section. (Code 1981, § 38-4-13, enacted by Ga. L. 2017, p. 430, § 1/SB 108.)

Effective date. — This Code section became effective July 1, 2017.

38-4-14. Creation of Georgia Veterans Service Foundation, Inc.; purpose; operation; reporting.

(a) The Veterans Service Board shall have the power and authority to establish a nonprofit corporation to be designated as the Georgia Veterans Service Foundation, Inc., to qualify as a public foundation under Section 501(c)(3) of the federal Internal Revenue Code for the purposes described in this Code section. The nonprofit corporation created pursuant to this Code section shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filing.

(b)(1) The purpose of the Georgia Veterans Service Foundation, Inc., shall be to actively seek supplemental funds and in-kind goods, services, and property to promote Georgia's state war veterans' homes and veterans' cemeteries and for any other purpose of the Veterans Service Board. Funds received by the foundation may be conveyed to the Department of Veterans Service or awarded through a competitive grant process administered by the Veterans Service Board.

(2) Georgia Veterans Service Foundation, Inc., shall be governed by a board of directors composed of seven persons, who shall not be

the same individuals as the currently serving members of the Veterans Service Board, who shall be appointed by the commissioner of veterans service, subject to the approval of the Veterans Service Board. Persons appointed to the board of directors shall have honorably served not less than three months in the armed forces of the United States or two years in a reserve or National Guard component of the armed forces of the United States. The members of the board of directors shall serve for seven-year terms that shall be staggered such that one member completes a term each year. The members may succeed themselves on the board of directors one time and thereafter may be reappointed to additional terms following a three-year interval after completion of any second consecutive term.

(3) The board of directors shall meet at least one time each year to conduct the business of Georgia Veterans Service Foundation, Inc. The board of directors shall annually elect from its membership a chairperson, a vice chairperson, a secretary, and a treasurer.

(4) The board of directors shall appoint a chief executive officer, a chief operating officer, and a chief financial officer of Georgia Veterans Service Foundation, Inc., from individuals who are employees of the Department of Veterans Service, excluding the commissioner of veterans service, who shall serve in these capacities without compensation but who shall be entitled to reimbursement of expenses reasonably incurred from Georgia Veterans Service Foundation, Inc., for performing their duties under this Code section.

(c) The nonprofit corporation created pursuant to this Code section shall be subject to the following provisions:

(1) In accordance with the Constitution of Georgia, no governmental functions or regulatory powers shall be conducted by such nonprofit corporation;

(2) Upon dissolution of such nonprofit corporation incorporated by the Veterans Service Board, any assets shall revert to the Veterans Service Board or to any successor to the Veterans Service Board or, failing such succession, to the State of Georgia;

(3) To avoid the appearance of undue influence on regulatory functions by donors, no donations to such nonprofit corporation from private sources shall be used for salaries, benefits, or travel expenses of the Veterans Service Board;

(4) Such nonprofit corporation shall be subject to all laws relating to open meetings and the inspection of public records;

(5) The Veterans Service Board shall not be liable for the action or omission to act of such nonprofit corporation; provided, however, as an administrative cost, such nonprofit corporation shall obtain and

maintain errors and omissions liability coverage insurance in the amount of not less than $1 million; and

(6) No debts, bonds, notes, or other obligations incurred by such nonprofit corporation shall constitute an indebtedness or obligation of the State of Georgia nor shall any act of such nonprofit corporation constitute or result in the creation of an indebtedness of the state; provided, however, such nonprofit corporation shall not have the power to incur long-term or short-term indebtedness in connection with its authority under this Code section but may incur short-term credit obligations. No holder or holders of such bonds, notes, or other obligations shall ever have the right to compel any exercise of the taxing power of the state nor to enforce the payment thereof against the state.

(d) Georgia Veterans Service Foundation, Inc., shall prepare and make public an annual report identifying all donors to Georgia Veterans Service Foundation, Inc., and the amount or property each donor donated, as well as all expenditures or other expenditures of money or property donated. Such report shall be provided to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Defense and Veterans Affairs and the Senate Veterans, Military and Homeland Security Committee, or their successors. Georgia Veterans Service Foundation, Inc., shall also provide such persons with a copy of all filings with the federal Internal Revenue Service. (Code 1981, § 38-4-14, enacted by Ga. L. 2018, p. 186, § 1/HB 422.)

Effective date. — This Code section became effective July 1, 2018.

Cross references. — Cemeteries for veterans, § 38-4-70 et seq.

ARTICLE 2

VETERANS BENEFITS

Part 1

Veterans Education

38-4-30. Short title.

Cross references. — Academic credit for military training and experience, § 20-4-38.

PART 2

WAR VETERANS HOME

38-4-50. "War veterans" defined.

As used in Code Sections 38-4-51 and 38-4-52, the term "war veterans" means any veterans who were discharged under other than dishonorable conditions and who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during the period beginning January 31, 1955, and ending on August 1, 1990. (Ga. L. 1955, Ex. Sess., p. 18, § 3; Ga. L. 1968, p. 1247, § 1; Ga. L. 2017, p. 719, § 1/HB 322.)

The 2017 amendment, effective July 1, 2017, substituted "August 1, 1990" for "May 7, 1975" at the end of this Code section.

38-4-55. Admissions and discharges; rules and regulations concerning.

(a) Admissions to and discharges from any facility of the Georgia State War Veterans' Home shall be under the control of the governing authority of the facility concerned under the laws and department rules and regulations in force at the time application for admission or for discharge is presented; provided, however, that a war veteran shall not be eligible for admission to the Georgia War Veterans' Nursing Home or the Georgia State War Veterans' Home unless such war veteran:

(1) Has been a resident of this state for a period of at least two years immediately prior to application for admission; or

(2) Is a current resident of this state and has been a resident of this state for at least five years out of the last 15 years prior to application for admission.

Provided, further, that the Veterans Service Board may admit and discharge veterans to the Georgia State War Veterans' Home who qualify for care and treatment under Title 38, U.S.C., Section 101 (19) and Section 641. The Veterans Service Board may adopt appropriate rules consistent with accepted medical considerations to determine if a war veteran qualifies under this subsection.

(b) The governing authority of such facility shall exercise appropriate police power and power of restraint over veterans at the Georgia State War Veterans' Home consistent with policies applied to other patients under their care or responsibility. (Ga. L. 1955, Ex. Sess., p. 18, § 4; Ga. L. 1969, p. 633, § 1; Ga. L. 1999, p. 796, § 1; Ga. L. 2015, p. 587, § 1/HB 180.)

The 2015 amendment, effective July 1, 2015, added the subsection (a) and (b) designations; and, in subsection (a), added the colon at the end of the first paragraph; added the paragraph (a)(1) designation, in paragraph (a)(1), substituted "Has" for "has" at the beginning, substituted "two years" for "five years", and added "; or" at the end, added paragraph (a)(2), and, in the ending undesignated paragraph of subsection (a), substituted "Provided," for "provided" at the beginning, substituted ". The Veterans Service Board" for "and" at the beginning of the second sentence, and substituted "determine if a war veteran qualifies under this subsection" for "carry out this function" at the end.

Part 3

Georgia Veterans Cemeteries

Cross references. — Creation of Georgia Veterans Service Foundation, Inc., § 38-4-14.

Part 4

Returning Veterans Task Force

Effective date. — This part became effective July 1, 2013.

38-4-90. Creation.

There is created within the Department of Veterans Service the Returning Veterans Task Force. (Code 1981, § 38-4-90, enacted by Ga. L. 2013, p. 563, § 1/SB 76.)

Cross references. — Creation of veterans court division, § 15-1-17.

38-4-91. Membership.

The Returning Veterans Task Force shall consist of one representative each from the Department of Veterans Service appointed by the commissioner of veterans service, the Department of Community Health appointed by the commissioner of community health, the Department of Behavioral Health and Developmental Disabilities appointed by the commissioner of behavioral health and developmental disabilities, the Department of Labor appointed by the Commissioner of Labor, the Department of Defense appointed by the adjutant general, the Board of Regents of the University System of Georgia appointed by the chancellor of the Board of Regents of the University System of Georgia, and the Technical College System of Georgia appointed by the commissioner of the Technical College System of Georgia. Other agencies may be invited to participate in the task force based on needs identified over time. The member appointed by the commissioner of

veterans service shall serve as chairperson of the task force. (Code 1981, § 38-4-91, enacted by Ga. L. 2013, p. 563, § 1/SB 76.)

38-4-92. Duties; recommendations.

The task force shall meet at least quarterly and shall investigate how state services can be provided to veterans returning from military service from which the veteran was discharged under conditions other than dishonorable within the most recent three years in order to assist them in integrating into society. The task force shall issue recommendations to each relevant state agency regarding improving the delivery of services to returning veterans. On or before November 1 of each year, the task force shall transmit specific suggestions for legislation designed to assist returning veterans to the Speaker of the House of Representatives, the Lieutenant Governor, and the Governor. (Code 1981, § 38-4-92, enacted by Ga. L. 2013, p. 563, § 1/SB 76.)

TITLE 39

MINORS

Chap.

2. Regulation of Employment of Minors, 39-2-1 through 39-2-21.

3. Interstate Compact on Juveniles, 39-3-1 through 39-3-7. [Repealed]

CHAPTER 1

GENERAL PROVISIONS

39-1-1. Age of legal majority; residence of persons in state for purpose of attending school.

Cross references. — Termination of juvenile's order of disposition, § 15-11-443. Referral of juveniles to adult services upon reaching age of majority, § 15-11-451.

CHAPTER 2

REGULATION OF EMPLOYMENT OF MINORS

Sec.

39-2-10. Employment of minors 12 and 13 years of age in wholesale and retail stores [Repealed].

39-2-11. Employment certificates — Required; requirements for issuance.

39-2-11.1. Employment of minors 14 years of age or older during school vacation months for care of lawns, gardens, and shrubbery.

39-2-12. Employment certificates — Contents; availability of blank forms; filing of duplicate copies.

39-2-14. Employment certificates — Revocation of certificates by Commissioner of Labor.

39-2-10. Employment of minors 12 and 13 years of age in wholesale and retail stores.

Reserved. Repealed by Ga. L. 1981, p. 792, § 1, effective April 7, 1981.

Editor's notes. — Ga. L. 2015, p. 5, § 39/HB 90, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, reserved the designation of this Code section.

39-2-11. Employment certificates — Required; requirements for issuance.

(a) Minors who are at least 12 years of age but less than 16 years of age shall not be employed by or permitted to work for any person, firm, or corporation unless an employment certificate, showing the true age of such minor and that such minor is not less than 12 years of age and is physically fit to engage in the employment sought to be obtained, is issued in writing by an appropriate issuing officer who shall be one of the following:

(1) If enrolled in a public school, the school superintendent or some member of his or her staff authorized by him or her, in the county or city where the minor resides;

(2) If enrolled in a licensed private school, the principal administrative officer thereof or some member of his or her staff authorized by him or her; or

(3) If enrolled in a home study program, the person, parent, or guardian providing the home study program.

(b) No employment certificate shall be issued to any minor until the minor shall have submitted to the issuing officer:

(1) A certified copy of a birth certificate or birth registration card; and

(2) A statement from the prospective employer describing the type of employment offered; and indicating that if furnished with a certificate from the appropriate issuing officer as required in subsection (a) of this Code section, such prospective employer could employ the minor immediately. It shall be understood that the prospective employer, by furnishing such statement, does not undertake to employ the minor for any specific period of time.

(c)(1) The employment certificate provided for in subsection (a) of this Code section shall be accompanied by a letter from the appropriate issuing officer indicating that the minor is enrolled in a school or a home study program full-time and has an attendance record in good standing for the current academic year. The employer of a minor shall maintain a copy of such certificate and letter in the minor's employment file. Such letter shall be updated in January of each subsequent academic year during which the minor maintains his or her employment until such minor reaches the age of 16 years. Any employer failing to comply with this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed $1,000.00, up to 12 months' imprisonment, or both, for each violation.

(2) The State Board of Education shall promulgate rules and regulations to provide for the issuance of a waiver or exemption from the provisions of this subsection to a minor, upon such minor's petition, if there is clear and convincing evidence that the enforcement of the provisions of this subsection upon such minor would create an undue hardship upon the minor or the minor's family or if there is clear and convincing evidence that the enforcement of the provisions of this subsection would act as a detriment to the health or welfare of the minor. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3; Ga. L. 2004, p. 107, § 21A; Ga. L. 2010, p. 878, § 39/HB 1387; Ga. L. 2015, p. 943, § 1/HB 366.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

39-2-11.1. Employment of minors 14 years of age or older during school vacation months for care of lawns, gardens, and shrubbery.

Notwithstanding any other provision of this chapter or any rule or regulation of the Commissioner of Labor adopted pursuant to the provisions of Code Section 39-2-2 to the contrary, a minor 14 years of age or over may be employed during the months of vacation from school in the care and maintenance of lawns, gardens, and shrubbery owned or leased by the employer of such minor, including the operation of equipment in connection therewith, provided that the minor is covered by an accident and sickness insurance plan or a workers' compensation insurance policy or plan provided by the employer; that the minor presents the employer with the employment certificate required by Code Section 39-2-11; and that the minor is permitted by the employer to care for and maintain only those lawns, gardens, and shrubbery owned or leased by the employer. The work authorized by this Code section includes the care and maintenance of lawns, gardens, and shrubbery on the grounds of mills or factories described in Code Section 39-2-1 and on the grounds of any other factory, mill, or business where employment of the minor within the factory, mill, or business might be prohibited by this chapter or by rules and regulations of the Commissioner of Labor. (Code 1981, § 39-2-11.1, enacted by Ga. L. 1988, p. 583, § 1; Ga. L. 1990, p. 1501, § 2; Ga. L. 2015, p. 943, § 2/HB 366.)

The 2015 amendment, effective July 1, 2015, in the proviso, inserted "that" following "provided" near the beginning, substituted "employer; that the minor" for "employer that, the minor" near the middle, inserted "employment" preceding "certificate", and substituted "39-2-11; and that" for "39-2-11, and the" in the middle.

39-2-12. Employment certificates — Contents; availability of blank forms; filing of duplicate copies.

(a) Employment certificates shall state the full name, date, and place of birth of the minor; the name and address of the parents, guardian, or other person having custody of such minor; and that the minor has appeared before the issuing officer and presented the evidence of age required by Code Section 39-2-11.

(b) Blank forms of employment certificates shall be made available by the Commissioner of Labor to school superintendents of public schools in the respective cities and counties, to principal administrative officers of private schools, and to persons, parents, or guardians providing home study programs.

(c) A duplicate copy of each employment certificate shall be filed with the Commissioner of Labor within 30 days from its issuance. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3; Ga. L. 2015, p. 943, § 3/HB 366.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of subsection (b) for the former provisions, which read: "Blank forms of employment certificates and identification cards shall be furnished by the Commissioner of Labor to the school superintendents in the respective cities and counties."

39-2-14. Employment certificates — Revocation of certificates by Commissioner of Labor.

The Commissioner of Labor may at any time revoke any employment certificate if in his or her judgment the employment certificate was improperly issued. The Commissioner shall be authorized to investigate the true age of any minor employed, hear evidence, and require the production of relevant books or documents. If the employment certificate of a minor is revoked, the employer of the minor at the time of the revocation shall be notified and the minor shall not be employed or permitted to work thereafter until a new and valid employment certificate shall have been obtained. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3; Ga. L. 2015, p. 943, § 4/HB 366.)

The 2015 amendment, effective July 1, 2015, inserted "or her" in the first sentence of this Code section.

CHAPTER 3

INTERSTATE COMPACT ON JUVENILES

Sec.
39-3-1 through 39-3-7 [Repealed].

39-3-1 through 39-3-7.

Reserved. Repealed by Ga. L. 2014, p. 763, § 1-1/HB 898, effective July 1, 2014.

Editor's notes. — This chapter consisted of Code Sections 39-3-1 through 39-3-7, relating to interstate compact on juveniles, and was based on Ga. L. 1972, p. 784, §§ 1-7; Ga. L. 1976, p. 1070, § 1.

CHAPTER 4

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

39-4-1. "Appropriate public authority" defined.

JUDICIAL DECISIONS

Cited in In the Interest of S.R.C.J., 317 Ga. App. 699, 732 S.E.2d 547 (2012).

39-4-10. Satisfaction of requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies.

JUDICIAL DECISIONS

Cited in In the Interest of S.R.C.J., 317 Ga. App. 699, 732 S.E.2d 547 (2012).

CHAPTER 5

ONLINE INTERNET SAFETY

Law reviews. — For article, "Revenge Pornography and First Amendment Exceptions," see 65 Emory L.J. 661 (2016).

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